

Troy Fraser

June 13, 2012

<p>346212 eb</p> <p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, * Plaintiff, *</p> <p>VS. *</p> <p>ERIC H. HOLDER, JR., in his * official capacity as Attorney * General of the United States, *</p> <p>Defendant, *</p> <p>ERIC KENNIE, et al, *</p> <p>Defendant-Intervenors, *</p> <p>TEXAS STATE CONFERENCE OF NAACP * CASE NO. BRANCHES, et al, * 1:12-CV-00128 Defendant-Intervenors, * (RMC-DST-RLW)</p> <p>TEXAS LEAGUE OF YOUNG VOTERS * THREE-JUDGE COURT</p> <p>EDUCATION FUND, et al, *</p> <p>Defendant-Intervenors, *</p> <p>TEXAS LEGISLATIVE BLACK CAUCUS, *</p> <p>et al, *</p> <p>Defendant-Intervenors, *</p> <p>VICTORIA RODRIGUEZ, et al *</p> <p>Defendant-Intervenors. *</p> <p>DEPOSITION OF SENATOR TROY FRASER VOLUME 2</p> <p>UPON RECEIPT OF SIGNATURE, THE ORIGINAL OF THIS DEPOSITION WILL BE IN THE CUSTODY OF: Elizabeth Westfall, Esquire U.S. Department of Justice 950 Pennsylvania Avenue, NW NWB - Room 7202 Washington, DC 20530</p> <p>Date Edith A. Boggs, CSR</p> <p>6-13-12 HOUSTON, TEXAS</p>	<p>1 APPEARANCES</p> <p>2</p> <p>3</p> <p>4 ATTORNEYS FOR PLAINTIFF, STATE OF TEXAS:</p> <p>5</p> <p>6 Office of the Attorney General of Texas P.O. Box 12548 (78711-2548) 209 West 8th Street, 8th Floor 7 Austin, Texas 78701 8 By: Patrick K. Sweeten, Esquire and Stacey Napier, Esquire</p> <p>9 (512) 936-1307 10 patrick.sweeten@aog.state.tx.us</p> <p>11</p> <p>12 ATTORNEY FOR DEFENDANT, HOLDER, ET AL:</p> <p>13</p> <p>14 U.S. Department of Justice 950 Pennsylvania Avenue, NW NWB - Room 7202 15 Washington, DC 20530 16 By: Elizabeth S. Westfall, Esquire 17 (202) 305-7766 elizabeth.westfall@usdoj.gov</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 DEPOSITION OF SENATOR TROY FRASER</p> <p>9</p> <p>10</p> <p>11 DEPOSITION AND ANSWERS of SENATOR TROY FRASER, taken</p> <p>12 before Edith A. Boggs, a certified shorthand reporter in</p> <p>13 Harris County for the State of Texas, taken at the</p> <p>14 offices of Dechert, LLP, 300 6th Street, Suite 2010,</p> <p>15 Austin, Texas, on the 13th day of June, 2012, between</p> <p>16 the hours of 1:17 p.m. and 3:49 p.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (Continued)</p> <p>2</p> <p>3</p> <p>4 ATTORNEY FOR DEFENDANT-INTERVENOR TEXAS STATE CONFERENCE OF NAACP BRANCHES AND THE MEXICAN AMERICAN LEGISLATIVE CAUCUS:</p> <p>5</p> <p>6 Dechert, LLP 300 6th Street, Suite 2010 Austin, Texas 78701</p> <p>7</p> <p>8 By: Lindsey Stelcen, Esquire</p> <p>9 (512) 394-3000 lindsey.stelcen@dechert.com</p> <p>10</p> <p>11 ATTORNEY FOR THE KENNIE INTERVENORS:</p> <p>12 Brazil & Dunn, LLP 4201 Cypress Creek Parkway, Suite 530 13 Houston, Texas 77068 14 By: Chad Dunn, Esquire 15 (281) 580-6310 chad@brazilanddunn.com</p> <p>16</p> <p>17</p> <p>18 REPORTED BY:</p> <p>19 Ms. Edith A. Boggs</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 QUESTIONS BY PAGE</p> <p>4 Ms. Westfall 6</p> <p>5</p> <p>6 INDEX OF EXHIBITS</p> <p>7</p> <p>8 NO. MARKED DESCRIPTION</p> <p>9 550 12 Notice of Deposition</p> <p>10 551 16 Senate Rules adopted by 82nd</p> <p>11 Legislature January 19, 2011, Senate Resolution No. 36</p> <p>12 552 48 Senate Rules adopted by 81st</p> <p>13 Legislature January 14, 2009, Senate Resolution No. 14</p> <p>14 553 65 Senate Journal, Fourth Day, Monday,</p> <p>15 January 24, 2011</p> <p>16 554 85 E-mail dated 1-27-11 from Brenda</p> <p>17 Payne</p> <p>18 555 91 E-mail dated 1-28-11 from R. L.</p> <p>19 Kucera</p> <p>20 556 99 E-mail dated 1-21-11 from Mickey</p> <p>21 Mathis</p> <p>22 557 102 E-mail dated 1-25-11 from Catherine</p> <p>23 Engelbrecht</p> <p>24 558 107 E-mail dated 1-26-11 from Sonia</p> <p>25 Santana</p>	<p>1 answers to questions regarding the substance and purpose</p> <p>2 of the two-thirds rule, the effect of a Governor</p> <p>3 designating a bill as emergency legislation and whether</p> <p>4 he was aware of any conversations regarding the timing</p> <p>5 of consideration of Senate Bill 14.</p> <p>6 He is going to answer questions based upon</p> <p>7 those issues, as set forth in the Court's order. He is</p> <p>8 continuing to assert his legislative privilege as to any</p> <p>9 matters that would be covered by that.</p> <p>10 And with that, I'll let you proceed with the</p> <p>11 examination, Counsel.</p> <p>12 MS. WESTFALL: Thank you, Mr. Sweeten.</p> <p>13 Q. (BY MS. WESTFALL) And just to be clear, Senator,</p> <p>14 are you also aware that the Court ruled that other</p> <p>15 subjects, such as communications between legislators and</p> <p>16 constituents, lobbyists and interest groups, public</p> <p>17 statements and press releases and statements made after</p> <p>18 Senate Bill 14 was signed into law are not subject to</p> <p>19 legislative privilege?</p> <p>20 A. I would like to be shown that, please.</p> <p>21 MR. SWEETEN: Well, I mean, to the extent</p> <p>22 that the Court's order is limiting as to these three</p> <p>23 issues, we don't intend -- I mean, our intention is to</p> <p>24 have him sit for the issues that the Court has ordered</p> <p>25 him to sit for. He will answer the questions that the</p>
<p>1 SENATOR TROY FRASER</p> <p>2 was called as a witness and, being first duly sworn by</p> <p>3 the notary, testified as follows:</p> <p>4 EXAMINATION</p> <p>5 Q. (BY MS. WESTFALL) Good afternoon, Senator</p> <p>6 Fraser. How are you?</p> <p>7 A. Very good.</p> <p>8 Q. Good. Could you state and spell your name again</p> <p>9 for the record.</p> <p>10 A. Senator Troy Fraser. Last name is F R A S E R.</p> <p>11 Q. And you were previously deposed in this matter,</p> <p>12 right?</p> <p>13 A. I was.</p> <p>14 Q. Do you remember the ground rules I gave you last</p> <p>15 time?</p> <p>16 A. I do.</p> <p>17 Q. And you are appearing to resit for your</p> <p>18 deposition, as ordered by the Court in this matter on</p> <p>19 June 5th; is that correct?</p> <p>20 A. That's my understanding, yes.</p> <p>21 MR. SWEETEN: Just for the record, let me</p> <p>22 just state that we are here pursuant to the Court's</p> <p>23 order of June 5th, 2012.</p> <p>24 In that order, the Court required Senator</p> <p>25 Fraser to resit for a deposition, to provide nonexvasive</p>	<p>1 Court has provided for, and the Court has not reopened</p> <p>2 the examination with respect to constituent</p> <p>3 communication.</p> <p>4 MS. WESTFALL: Mr. Sweeten, I provided you</p> <p>5 with correspondence indicating that we would be</p> <p>6 examining the Senator on areas related to the order on</p> <p>7 motions to spell, ECF 167, June 5th, 2012, that related</p> <p>8 to constituent communications, public statements and</p> <p>9 press releases and statements made after the signing.</p> <p>10 This deposition has been ordered by the</p> <p>11 Court to be reopened. The Court has ruled that certain</p> <p>12 issues and areas of examination are not subject to</p> <p>13 legislative privilege, and I'm going to examine the</p> <p>14 Senator on those areas, as permitted to do so by the</p> <p>15 Court's order.</p> <p>16 MR. SWEETEN: Okay. And what I'm telling</p> <p>17 you is that my interpretation of the Court's order is he</p> <p>18 is sitting for these three topics and these topics only.</p> <p>19 If you can show me the support for why you</p> <p>20 believe that you could extend into the other area, which</p> <p>21 I understand you to say is constituent communications,</p> <p>22 then we can have a discussion on that issue.</p> <p>23 MS. WESTFALL: Mr. Sweeten, the whole entire</p> <p>24 order is about areas that are in the Court's ruling</p> <p>25 subject to legislative privilege and outside of that</p>



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<p>1 privilege.</p> <p>2 They have identified certain areas that are</p> <p>3 outside of the legislative privilege and, therefore, now</p> <p>4 that we are -- Mr. Fraser is here for his deposition and</p> <p>5 to resit, I'm going to examine him on those areas that</p> <p>6 the Court has deemed not privileged.</p> <p>7 If you are disagreeing with this ruling, we</p> <p>8 can take a break and I can -- we can take a break and</p> <p>9 discuss it further.</p> <p>10 MR. SWEETEN: I'm not disagreeing on the</p> <p>11 Court's ruling, of course. I'm disagreeing on our</p> <p>12 interpretation of what the Court's ruling is.</p> <p>13 So, I'm just saying if you've got support</p> <p>14 for that, show me that and we'll have a discussion on</p> <p>15 it.</p> <p>16 I mean, he's certainly here to testify as to</p> <p>17 the matters the Court has provided that he will testify</p> <p>18 to.</p> <p>19 MS. WESTFALL: I would add that the Court</p> <p>20 just recently ruled -- and I don't have the ECF number</p> <p>21 in front of me -- that Representative Harless, who was</p> <p>22 deposed today, was subject to examination of some of the</p> <p>23 areas that the Court ruled did not fall within the</p> <p>24 legislative privilege, and the State lost on that issue,</p> <p>25 and she was directed to answer questions in that regard</p>	<p>11</p> <p>1 the order in a private setting outside of this</p> <p>2 deposition.</p> <p>3 We can go off the record if you would like</p> <p>4 to now or we can do the first part of the examination</p> <p>5 and then break, whatever your preference is.</p> <p>6 MR. SWEETEN: Okay. If we can put that</p> <p>7 issue aside, we could get going on this and then we can</p> <p>8 revisit it at a break, and then we can discuss the</p> <p>9 specific areas.</p> <p>10 So, let's proceed with the ordered</p> <p>11 examination, and then we'll discuss the other issue.</p> <p>12 MS. WESTFALL: Very good. Thank you.</p> <p>13 Q. (BY MS. WESTFALL) Senator, what did you do to</p> <p>14 prepare for today's deposition?</p> <p>15 A. I met with counsel that's sitting beside me,</p> <p>16 Mr. Sweeten, and I read my last deposition.</p> <p>17 Q. Did you review any other documents?</p> <p>18 A. No.</p> <p>19 Q. When you met with Mr. Sweeten, was anyone else</p> <p>20 present?</p> <p>21 A. Yes, both counsel that are with me today.</p> <p>22 Q. Other than your attorneys, did you speak to</p> <p>23 anyone else about your deposition today?</p> <p>24 A. Only commenting that I was being deposed, but no,</p> <p>25 not a discussion about the deposition.</p>
<p>10</p> <p>1 in that capacity following the issuance of the order on</p> <p>2 motions to compel, ECF 167.</p> <p>3 So, I think that reasoning applies with</p> <p>4 equal force here. I would ask that you reconsider your</p> <p>5 position on this issue.</p> <p>6 MR. SWEETEN: Okay. Well, let me discuss it</p> <p>7 with the Senator. And I think what I hear you saying</p> <p>8 is: We were able to do it -- we asked the Court for</p> <p>9 permission to do it with respect to Patricia Harless</p> <p>10 and, therefore, we think that the Court would probably</p> <p>11 do the same thing here.</p> <p>12 I don't here you saying that we're directly</p> <p>13 ordered to that. Is that a fair --</p> <p>14 MS. WESTFALL: You're not ordered but I</p> <p>15 think it is ill advised, not that I would ever give you</p> <p>16 legal advice, Mr. Sweeten.</p> <p>17 MR. SWEETEN: Okay. I understand your</p> <p>18 position.</p> <p>19 THE WITNESS: Before we leave, I'd like for</p> <p>20 her to again go over the areas that she intends to ask</p> <p>21 about so I can be clear in my mind.</p> <p>22 MS. WESTFALL: Certainly. Well, you know</p> <p>23 what, instead of advising you what is in this order,</p> <p>24 since I'm not your attorney, I would have your attorney</p> <p>25 tell you about the scope of the order and the rulings in</p>	<p>12</p> <p>1 Q. Did you bring any notes with you here today?</p> <p>2 A. I did not.</p> <p>3 (Exhibit 550 marked.)</p> <p>4 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>5 marked US 550. Do you recognize this document?</p> <p>6 A. Do I recognize it? No.</p> <p>7 Q. If you could take one minute to take a look --</p> <p>8 MR. SWEETEN: Let me take a look at this, if</p> <p>9 you would.</p> <p>10 Q. (BY MS. WESTFALL) Senator, if you could take a</p> <p>11 look at this document and let me know whether you --</p> <p>12 after you've had a chance to review it, whether you've</p> <p>13 ever seen it before?</p> <p>14 A. Actually, I'm not sure. I don't know whether I</p> <p>15 have or not.</p> <p>16 Q. I'd turn your attention to the second page of</p> <p>17 this document. And it's a double-sided document. So,</p> <p>18 if you could see on the second page where it indicates</p> <p>19 that the State has been directed to have you appear</p> <p>20 today at 1:00 p.m. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Does that refresh your recollection in any way</p> <p>23 about what this document is?</p> <p>24 A. That -- I'm aware that I was required to be here.</p> <p>25 Q. Thank you.</p>



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<p>1 And turning in a couple of pages after the 2 numbered paragraphs defining terms, do you see that it 3 lists Documents on the next page? 4 A. What number? 5 Q. On the following page. Unfortunately, these 6 pages are not paginated but after -- 7 A. What number is the sub number? 8 Q. After paragraph 11 on the following page, sir, 9 where it says Documents, do you see it lists a number of 10 documents, 1, 2, 3? 11 A. Yes. 12 Q. Did you under -- did you or your staff undertake 13 a search for these documents? 14 A. I believe my staff did. I did not. 15 Q. Do you know whether it was Ms. McCoy? 16 A. Ms. McCoy would have been the one. 17 Q. Do you know where she searched for the documents? 18 A. In our file in our office. 19 Q. Do you know what she found in terms of documents? 20 And I'm not asking you for the specific documents but 21 the types of documents she found? 22 A. I believe every document that had been requested 23 had been released to the Attorney General's Office, and 24 I believe they had some that they felt like were 25 privileged but we have no other documents in our</p>	<p>13 1 previous question. 2 (Whereupon, the requested testimony was read back 3 as follows: 4 QUESTION: Sir, are you familiar with the Senate 5 procedure which you previously referred to in 6 your prior deposition as the two-thirds 7 procedure?) 8 A. I would like for you to show me where I referred 9 to something as the two-thirds rule -- vote rule. 10 Q. (BY MS. WESTFALL) Okay. Well, I'm going to 11 strike that question for the time being. We'll go on to 12 the next question. 13 A. And I am prepared to expand and discuss, because 14 I understand the Court would like that, but the question 15 as you asked it, implying that I had referred to that, I 16 don't remember implying, and I am prepared to expand. 17 Q. Okay. And I will ask you many questions 18 generally about what has been referred to in the press 19 and elsewhere as the two-thirds rule or procedure or 20 whatnot. 21 I will ask you the question I just asked earlier, 22 which is, when a bill is favorably reported from a 23 committee, what happens to the bill next? 24 A. The bill, after it's reported -- first, 25 obviously, you have to have the paperwork that would be</p>
<p>14 1 possession that have not been previously either asked 2 for or released to the Attorney General's Office. 3 Q. I see. So, is it your understanding that there 4 were no documents recently produced from your office? 5 Is that right? 6 A. That is my understanding. 7 Q. Sir, are you familiar with the Senate procedure 8 which you previously referred to in your prior 9 deposition as the two-thirds procedure? 10 A. No. 11 Q. Sir, when a bill in the Senate is favorably 12 reported by a committee, what happens to the bill next? 13 MR. SWEETEN: And you can answer as a 14 general matter. I think many of these questions today 15 will be general parliamentary matters, and so, you can 16 answer those questions. 17 Just don't -- if it comes to your thoughts 18 or mental impressions about a specific bill today, then 19 we're going to assert legislative privilege on that but 20 go ahead. 21 A. I'm sorry. I'm going to stop you here. I would 22 like to go back to the previous question and have it 23 read back to me again. 24 Q. (BY MS. WESTFALL) Certainly. 25 MS. WESTFALL: Could you read back the</p>	<p>16 1 correctly delivered, and that is delivered to the 2 Lieutenant Governor's Office. 3 The Lieutenant Governor, they -- my understanding 4 is they generally preview the bill, and then they will 5 post that on a calendar. 6 Q. Sir, does that go on the calendar of the regular 7 order of business? 8 A. We have multiple calendars that -- there are 9 special orders, there are regular orders for second 10 reading, there are regular orders for third reading, and 11 then any other that would be considered served. There 12 are multiple calendars. 13 Q. I think instead of talking about this in the 14 abstract, we'll mark this 551. 15 (Exhibit 551 marked.) 16 Q. (BY MS. WESTFALL) Sir, you've been hand what's 17 been marked US 551. Do you recognize this document? 18 A. I have not examined the document in full but on 19 the surface, on the face, it says Senate Rules adopted 20 by the 82nd legislature, and I'm assuming you're 21 representing that this is that document. 22 Q. Yes, sir, I will represent to you -- and I'm sure 23 your counsel won't disagree -- that this is a copy of 24 the Senate 2011 Rules in its entirety. 25 A. Yes.</p>



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<p>1 Q. Does the Senate consider bills in a particular 2 order? 3 A. Yes. 4 Q. What is that order? 5 A. There are multiple orders that could be created, 6 that if a bill is designated for a special order, it 7 would be designated what special order it would be, and 8 if a bill is designated a special order, it would become 9 the first bill that would be considered on that 10 legislative day. 11 If there's not a special order and you have bills 12 to be considered for a second reading that are eligible, 13 they would be required to be brought up in the order of 14 business in which, you know, they came out of committee. 15 Q. I'd like to turn your attention to Rule 5.09 on 16 Page 21. 17 A. 21? 18 Q. On Page 21, Rule 5.09. 19 A. Okay. 20 Q. Do you see what that rule is? 21 A. Order of considering bills and resolutions. 22 Q. Could you describe your understanding of Rule 23 5.09? 24 A. 5.09 says, "At the conclusion of the morning 25 call, the Senate shall proceed to consider business on</p>	<p>17 1 printing rule with a 21 vote, two-thirds vote. 2 If a bill is coming up -- had been passed on 3 second reading and there's a 24 or 48-hour layout for 4 third reading, the Senate would be allowed -- if the 5 other members would do it, they could suspend that rule 6 with a 21 vote or a two-thirds majority of those present 7 in order to suspend that rule. 8 So, any rule in the Senate where there's an 9 existing rule, you are allowed to suspend that rule. 10 There are literally thousands of suspensions that are 11 done on probably as many as 15 different categories of a 12 suspension. 13 So, when you refer to something as a two-thirds 14 rule, the two-thirds could apply to the posting rule, it 15 could be the printing rule, it could be the layout rule, 16 it could be third reading or it could apply to the 17 regular order of business. 18 And that is my reason for saying there is no such 19 thing as a two-thirds rule. You have to have a 20 two-thirds majority in Robert's Rules of Order, 21 according to parliamentary procedure, in order to 22 suspend any rule that is established by the Senate, 23 which this is a rule that's been established. If you 24 want to change the order of that, then you have to 25 suspend the regular order of business in order to take</p>
<p>18 1 the President's table, which shall be disposed of in the 2 following order." One would be special orders. Two 3 would be unfinished business. Three would be Senate 4 Joint Resolutions. Four would be Senate Resolutions. 5 Five, Senate Concurrent Resolutions. Six, Senate bills 6 on third reading. Seven, Senate bills on second 7 reading. Eight, House Joint Resolutions. Nine, House 8 bills on third reading. Ten, House bills on second 9 reading. And Eleven, House Concurrent Resolutions. 10 Q. Is it your understanding that under Rule 5.09 11 that special orders are considered first in terms of 12 order? 13 A. The rule says it will be disposed in the 14 following order. 15 Q. And turning your attention to the end of that 16 rule on the notes of rulings, does it indicate that the 17 order of business may be changed by a two-thirds vote of 18 the Senate? Do you see that? 19 A. I do see that. 20 Q. And what does that mean? 21 A. The -- a 21 vote rule or a vote of two-thirds of 22 the members of the Senate are used any time that you do 23 a suspension of an existing rule. 24 The example would be if there is a printing rule 25 and there's a 48-hour layout, we could suspend the</p>	<p>19 20 1 up and consider a bill. 2 Q. What is the regular order of business? 3 A. The regular order of business is the order that 4 it came out of the committee. 5 Q. Could you refer to a particular rule in the 6 Exhibit 551 that refers to what the regular order of 7 business is? 8 A. Well, it's -- if you look at the rules, if you 9 have a special order as number one, the first special 10 order that comes out would be number 1, and it would 11 have priority. 12 If there was unfinished business, which means 13 that if you had been carrying a bill and for some reason 14 you suspended that bill and you decided you were going 15 to have a time certain of 11:00 o'clock tomorrow 16 morning, well, at 11:00 o'clock tomorrow morning, it 17 would be -- if there were no special orders, it would 18 be -- would have number 1 preference. 19 So, your order of business is established by 20 Senate Rule 5.09. If you're not going to go in that 21 order and you're asking members to change that -- and 22 the example I'll give you is that if I had a House 23 resolution that I felt very strongly about but it was a 24 hundred bills down in the order and I was going to have 25 to wait and there were some constituents here that we</p>



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<p>21</p> <p>1 wanted to honor, I could ask the other members to allow 2 me to suspend the regular order of business to take up 3 and consider House Concurrent Resolution such and such, 4 and that is a common thing that happens often if a 5 member chooses to suspend the regular order of business 6 but the regular order of business, it would allow that 7 it is a majority vote as long as you go in the regular 8 order of business. 9 Q. I see. And turning your attention to Rule 5.12 10 on Page 25 -- 11 A. I'm sorry. 12 Q. Page 25, Rule 5.12. Do you see at the bottom 13 that describes regular order of business? 14 A. Uh-huh. 15 Q. Is this -- could you describe Rule 5.12? 16 A. I'd be glad to read it to you. It says, "Bills 17 and resolutions shall be considered on second reading 18 and shall be listed on the daily calendar of bills and 19 resolutions on the President's table for second reading 20 in the order in which the committee reports on them are 21 received by the Senate." 22 They're received, stamped with the time stamp as 23 being received by the Senate coming out of -- 24 Q. Just so I understand that clearly, the committees 25 report favorably bills and whatever order they come in</p>	<p>23</p> <p>1 MR. SWEETEN: You can answer as a general 2 matter. 3 A. There are some bills that are considered in the 4 regular order of business, and there are some bills that 5 are considered out of the regular order of business. 6 Q. (BY MS. WESTFALL) Is it fair to say that most 7 are considered out of the regular order of business? 8 A. It's fair to say that there are more considered 9 out of the regular order of business, not most. 10 Q. What type of bills or resolutions are considered 11 in the regular order of business? 12 A. Bills that came in in the regular order. If they 13 come in the regular order of business and there's not 14 some pressing reason why I or someone else needs to 15 bring our bill up, we operate in the regular order of 16 business, not unlike what the House does. The House 17 does the same procedure. 18 Q. If you do that and you proceed on the regular 19 order of business, there is a risk, is there not, that 20 the session may end without the Senate having considered 21 your bill; isn't that right? 22 A. No. 23 Q. Why not? 24 A. Well, there's no limit on the length of time that 25 you can have the session. I have -- in 2009 on the</p>
<p>22</p> <p>1 and they're time stamped on, that is the regular order 2 of business; is that right? 3 A. That is the regular order of business. It is my 4 understanding that that's the way they do it. I'm not 5 there when they come in but they do establish a regular 6 order of business, and my understanding is that if I 7 chair Natural Resources and if I complete a bill and 8 we've got, you know, Senate Bill 300 and we send it over 9 favorably from the committee, they review it, as soon as 10 the paperwork is in order, they time stamp it, and if I 11 am 5th in the regular order of business, it is my right 12 to bring that bill up 5th. 13 Q. And then you would only need a majority of the 14 Senates to vote in favor of that pursuant to the regular 15 order of business? 16 A. That is correct. If I chose to try to jump over 17 everybody and I wanted to come up first, I would have to 18 ask the other members to allow me to get two-thirds 19 majority to do that. 20 Q. So, I think you just said this but when a bill is 21 considered in the regular order of business, it only 22 requires a majority vote? 23 A. That's correct. 24 Q. Are most bills considered in the regular order of 25 business?</p>	<p>24</p> <p>1 photo voter ID bill -- 2 MR. SWEETEN: Don't discuss specific 3 legislation. 4 A. Okay. There are bills that have gone -- there's 5 not a time limit on the length of the time that you can 6 go. So, the answer is no. Generally, there's 7 sufficient time. 8 The Senate operates on -- you know, we -- I don't 9 know whether you would call it pacing yourself but we 10 take care of business to stay up with the order of -- to 11 take care of sufficient business but -- 12 Q. (BY MS. WESTFALL) Sir, isn't it true that some 13 bills are reported favorably out of committee and they 14 do not reach the Senate floor for a vote before the 15 session ends? 16 A. Yes. 17 Q. When bills are reported favorably from committee, 18 I believe you said they go to the Lieutenant Governor's 19 Office and get stamped; is that correct? 20 A. I'm telling you what I believe is the policy. 21 I've never physically seen that and it has never been 22 explained to me but my understanding is there is a 23 procedure for establishing the regular order of 24 business. 25 Q. Is that a committee or is it your understanding</p>



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<p>1 that that is the Lieutenant Governor in his capacity as 2 the President of the Senate doing that? 3 A. He and his staff but that also is a power given 4 to that office by the Senate members per the Senate 5 Rules. 6 We allow the -- 7 THE WITNESS: You can tell me if you don't 8 want me to head there. 9 A. But the House has a Calendars Committee that does 10 this. The Senate has chosen not to have a Calendars 11 Committee. We allow the Lieutenant Governor to 12 establish that but if we disagree, through the rules, we 13 have the ability to override. 14 Q. (BY MS. WESTFALL) I see. So, the Lieutenant 15 Governor's Office is in charge of calendaring bills that 16 come out of committee before they go to the floor; is 17 that right? 18 A. That would be a correct representation. 19 Q. I believe you testified earlier about bill 20 blockers. Do you remember that testimony? 21 A. A blocker bill. 22 Q. Blocker bills. I stand corrected. Can you 23 remind what a blocker bill is? 24 A. A blocker bill would be if my bill is number 10 25 and somebody has a bill that is number 9, that bill is</p>	<p>25 27 1 A. Yes. 2 Q. And that they are administrative in nature, do 3 you remember that testimony? 4 A. Yes. 5 Q. Does the filing of that blocker bill require that 6 all bills must receive support of two-thirds of Senators 7 to suspend -- or to overcome that blocker bill to be 8 heard? 9 A. What you're actually saying is that you have to 10 come to a resolution of the first bill on the calendar, 11 and if that bill is a bill -- something that the author 12 of the bill does not choose to resolve that and it is 13 sitting and if there's a bill behind it that you choose 14 to break up, you would have to make a motion that I 15 would like to suspend, you know, the regular order of 16 business to take up and consider bill number 2 to jump 17 over bill number 1. 18 Q. Since you have been serving in the Senate 19 since -- you've served in the Senate since 1997, right? 20 A. Uh-huh. 21 Q. Has there always been a blocker bill filed at the 22 beginning of the session in your experience? 23 MR. SWEETEN: I don't think that's correct. 24 You've served in the Senate since '97? 25 THE WITNESS: Uh-huh.</p>
<p>26 1 blocking my bill from being brought up, and until number 2 9 is brought up, I can't bring up number 10. 3 Q. My understanding -- and correct me if I'm 4 wrong -- do blocker bills require that even if you're in 5 the regular order of business and your bill is coming up 6 for a vote that you would have to get two-thirds of the 7 Senate to support a suspension of the rules to have your 8 bill considered? 9 A. Please repeat that question. 10 MS. WESTFALL: Could you read that back. 11 (Whereupon, the requested testimony was read back 12 as follows: 13 QUESTION: My understanding -- and correct me if 14 I'm wrong -- do blocker bills require that even 15 if you're in the regular order of business and 16 your bill is coming up for a vote that you would 17 have to get two-thirds of the Senate to support a 18 suspension of the rules to have your bill 19 considered?) 20 A. No, that is not correct. If you are following 21 the regular order of business and your bill is scheduled 22 to come up next, it requires a majority vote. 23 Q. (BY MS. WESTFALL) I believe you testified 24 earlier that blocker bills are often filed at the 25 beginning of a session. Do you remember that testimony?</p>	<p>28 1 MR. DUNN: Is that a yes? 2 THE WITNESS: That is a yes. 3 MR. DUNN: Just for our court reporter. 4 MS. WESTFALL: Thank you, Mr. Dunn. 5 THE WITNESS: Are you shocked? 6 MR. SWEETEN: Go ahead. 7 Q. (BY MS. WESTFALL) Since you have served in the 8 Senate, every session has there been a blocker bill 9 filed at the beginning of the session? 10 A. To my knowledge, there has been a bill filed that 11 would -- that you -- if your bill was behind that bill, 12 you would have to suspend the necessary rules. 13 Q. So, you can't recall, sitting here today, any 14 legislature that you've served in since you've been in 15 the Senate when there hasn't been such a blocker bill 16 filed? 17 A. No. 18 MR. SWEETEN: Was your question regular 19 session or -- 20 A. Again, I'm -- the term blocker bill is a term of 21 art, and there's nothing in the Senate Rules that refers 22 to it, and there's nothing in the Texas Constitution. 23 So, it implies that there is no such thing as a blocker 24 bill. 25 A blocker bill would be something, in my mind,</p>



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<p>29</p> <p>1 that that bill is blocking me bringing up my bill. So, 2 there is really no such thing as a blocker bill. It's 3 just if there's a bill in front of mine, it would be 4 blocking me bringing my bill up. 5 Q. (BY MS. WESTFALL) Thank you. 6 Is the blocker bill -- what you refer to as the 7 blocker bill, is that what others in the public may 8 refer to as the two-thirds procedure or rule? 9 A. No. Now, I probably should -- you know, there is 10 a term of art that people refer to that we're going to 11 suspend the two-thirds rule but there is no such thing 12 as a two-thirds rule. 13 There is a two-thirds majority required to 14 suspend any existing Senate rule. There's an existing 15 Senate rule that says you have to go in the regular 16 order of business. 17 So, implying that there is a two-thirds rule 18 would imply that that two-thirds rule is the same rule 19 that has to do with a -- the printing rule because you 20 have to have a two-thirds majority, and it's the exact 21 same vote that you have to have to suspend the regular 22 order of business. 23 Q. Thank you. 24 And is there a particular rule in the Senate 25 Rules that embodies some of what you just testified</p>	<p>31</p> <p>1 You can answer. 2 A. This rule says exactly what it is. It is that if 3 you're going to take something out of the regular order 4 of business, it requires a two-thirds vote, but a 5 two-thirds vote is required on a printing if you're 6 going suspend, on a -- I don't know whether there's 15 7 but there's multiple rules that require a two-thirds 8 vote. 9 So, implying that this particular one is the 10 two-thirds vote, I would say no, that's not the case. 11 This is -- there is a two-thirds vote required to 12 suspend the regular order of business but it would be 13 improper to imply that it only applies to this. 14 Q. (BY MS. WESTFALL) I see. So, is it your 15 testimony that, generally speaking, the Senate requires 16 two-thirds of the Senators to vote in favor of anything, 17 many rules throughout the rules? 18 A. No. Every rule, if you do it in the order that 19 you're supposed to, is a majority vote. If you want to 20 change or get away from the regular rules and not do it 21 in the rules of the Senate, you have to have a vote of 22 two-thirds of the members to suspend that existing 23 Senate rule. 24 Q. Do you recall in the 2011 session which bills or 25 resolutions were considered under the regular order of</p>
<p>30</p> <p>1 about in terms of the two-thirds required to suspend 2 rules or is it throughout the rules, it refers to 3 two-thirds? 4 A. And I'm -- I probably should ask you -- it is my 5 belief -- and I'm sorry, I cannot point to it but I 6 believe in the Senate Rules, there is a rule that says 7 that if you want to suspend an existing Senate rule, it 8 would take a two-thirds majority of the Senate to 9 suspend that existing rule. 10 Q. I'm glad you've turned to that because I'm going 11 to direct your attention now to Rule 5.13 on Page 26, 12 suspension of the regular order of business. 13 A. Okay. 14 Q. Do you recognize this rule? 15 A. Yes. 16 Q. What does this rule do? 17 A. This rule says exactly what it says. "No bill, 18 joint resolution or resolution affecting state policy 19 may be considered out of its regular calendar order 20 unless the regular order is suspended by a vote of 21 two-thirds of the members present." 22 Q. Is this your understanding of what people refer 23 to as the two-thirds rule, Rule 5.13? 24 MR. SWEETEN: Objection. Calls for 25 speculation. Compound.</p>	<p>32</p> <p>1 business? 2 MR. SWEETEN: You can testify as to matters 3 of the public record. 4 A. All business in the 2011 session was considered 5 according to the regular order of business. That is our 6 rule. 7 Q. (BY MS. WESTFALL) Which bills or resolutions did 8 not -- only required a majority vote to pass on the 9 merits? 10 A. Special orders did not require a two-thirds vote. 11 House bill days that we -- generally it's usually 12 allocated -- I believe it's Wednesday and Thursday. On 13 that day when you bring up House bills, a two-thirds 14 vote is not required on those bills as long as they're 15 done in the regular order of business. That would be 16 the regular order of business and we bring those up and 17 it would not require a two-thirds vote to suspend the 18 regular order of business because you're doing them in 19 that order. 20 Q. Sitting here today concerning the 2011 session, 21 can you remember or describe or list all of the bills 22 that were considered in the regular order of business? 23 A. I'm sorry, I could not list all the bills. 24 Q. Do you know how many were? 25 A. I do not know how many.</p>



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<p>33</p> <p>1 Q. Was it fewer than 10?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Was it fewer than 10?</p> <p>4 A. I'm sorry, I've said I don't remember the bills</p> <p>5 or the number of bills.</p> <p>6 Q. Was it -- my question stands. Was it fewer than</p> <p>7 10, to the best of your recollection?</p> <p>8 MR. SWEETEN: Objection. Asked and</p> <p>9 answered. Objection. Foundation.</p> <p>10 THE WITNESS: Did you tell me to answer?</p> <p>11 MR. SWEETEN: You can answer if you can</p> <p>12 answer the question. I'm not prohibiting you from</p> <p>13 answering.</p> <p>14 A. There were -- on the House bills coming over,</p> <p>15 approximately half of the bills considered in the</p> <p>16 legislative session come from the House, and if the</p> <p>17 House bills are considered in regular order, there is</p> <p>18 not a suspension vote necessary.</p> <p>19 So, I'm sorry, I can't answer that question. I</p> <p>20 don't know the number.</p> <p>21 Q. (BY MS. WESTFALL) Okay. So, your testimony is</p> <p>22 you do not recall the number of bills in the 2011</p> <p>23 session that were considered by regular order of</p> <p>24 business?</p> <p>25 A. I do not.</p>	<p>35</p> <p>1 the Senator's knowledge of the rules.</p> <p>2 MR. SWEETEN: You're asking then general</p> <p>3 information?</p> <p>4 A. And I'll answer general. What you're referring</p> <p>5 to here is if a special order had not been designated</p> <p>6 specifically in the Senate Rules. If the Senate Rules</p> <p>7 are established and in the Senate Rules themselves, you</p> <p>8 designate items that would be a special order, that is a</p> <p>9 majority vote of the Senate to establish that.</p> <p>10 Once they are in the Senate Rules and the Senate</p> <p>11 Rules are established and it's been designated that it</p> <p>12 would only require a majority vote, that would refer</p> <p>13 back to Rule 5.09, which would put the special order as</p> <p>14 the number 1 bill on the order of business and would</p> <p>15 only require a majority vote.</p> <p>16 If someone wanted to change all other order and</p> <p>17 make it a special order, they would be suspending the</p> <p>18 existing rules, the Senate Rules, and it would take a</p> <p>19 two-thirds vote.</p> <p>20 But this has no -- this is no different than if</p> <p>21 someone was in the regular order of business, their bill</p> <p>22 was number 100 and they wanted to suspend the regular</p> <p>23 order of business, it would have the same weight.</p> <p>24 Q. (BY MS. WESTFALL) When do special orders usually</p> <p>25 arise in the session?</p>
<p>34</p> <p>1 Q. And what is a special order?</p> <p>2 A. A special order, as you've seen in 5.01 -- was</p> <p>3 that the number?</p> <p>4 Q. I'll turn your attention to Page 24 at Rule 5.11.</p> <p>5 A. I'm looking at 5.09. A special order is at the</p> <p>6 top of the regular order of business. So, if something</p> <p>7 is specified as a special order, it moves to the top of</p> <p>8 the list.</p> <p>9 Q. Turning your attention to Rule 5.11 on Page 24.</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that section about special orders?</p> <p>12 A. Yes.</p> <p>13 Q. What is a special order?</p> <p>14 A. 5.11 says, "Any bill, resolution or other measure</p> <p>15 may on any day be made a special order for a future time</p> <p>16 of the session by an affirmative vote of two-thirds of</p> <p>17 the members present."</p> <p>18 Q. Under what circumstances are bills designated as</p> <p>19 special orders?</p> <p>20 MR. SWEETEN: Don't answer that question if</p> <p>21 it would reveal matters of legislative privilege, your</p> <p>22 thoughts, mental impressions, motivations regarding any</p> <p>23 specific legislation.</p> <p>24 MS. WESTFALL: Mr. Sweeten, this is not</p> <p>25 about a particular piece of legislation. This is about</p>	<p>36</p> <p>1 A. Since I've been in the Senate, any time that</p> <p>2 there was an issue that was a -- either a very large</p> <p>3 specific issue, difficult issue, it could be and often</p> <p>4 was given the status of special order.</p> <p>5 Q. Was that usually --</p> <p>6 A. I'll add that almost every session since I've</p> <p>7 been in the Senate, there has been something specified</p> <p>8 as a special order. And my understanding is, looking at</p> <p>9 the history of the Senate prior to me getting there when</p> <p>10 there was Democratic control, they used the special</p> <p>11 order virtually every session.</p> <p>12 Q. Would the special orders that you just testified</p> <p>13 to, would they be set during the session if a Senator</p> <p>14 made a motion to create a special order or were they</p> <p>15 usually embodied in the Senate Rules themselves?</p> <p>16 A. The more logical way to do it would be to embody</p> <p>17 it in the Senate Rules. And the Senate Rules could</p> <p>18 either be established at the start of the session or</p> <p>19 they could be amended at any time during the session.</p> <p>20 This is a method -- this is a method to do that</p> <p>21 but if you did that, you had to have a two-thirds -- so,</p> <p>22 this is a way to establish a special order. I would say</p> <p>23 it's more likely that it would happen in the Senate</p> <p>24 Rules themselves as a special order.</p> <p>25 Q. Do you recall -- other than the special order</p>



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<p>1 regarding voter ID requirements in the 2011 and 2009 2 Rules, do you recall any other special orders that were 3 created in the Senate Rules themselves, to your 4 knowledge? 5 A. In what year? 6 Q. Any year in which you've served in the Senate. 7 A. I'm going to answer you, you know, what I -- I 8 cannot give you specifics but these are issues that I 9 do -- I believe were special orders. 10 Through time, there have been multiple budgets 11 that were put into special order and we voted on. There 12 have been redistricting plans not only in the current 13 time when the Republicans control but also prior to me 14 getting in the Senate, when the Democrats controlled, 15 that they did special orders for redistricting because 16 they listed that. 17 Prior to me getting to the Senate, when I was in 18 the House, there was a workers' compensation bill that I 19 believe -- my understanding was that it was placed as 20 special order. 21 At that time, there were over two-thirds of the 22 members in the House that were Democrat and about 23 four-fifths of the members in the Senate that were 24 Democrat, with a Democrat speaker and a Democrat 25 Lieutenant Governor, and they placed that as a -- it's</p>	<p>37 38 39 1 Q. To your knowledge, were the Senate Rules in 2011 2 amended at all? 3 A. Well, yes. Every session, at the start of the 4 session, the membership goes into caucus, and there will 5 be usually a review of the rules by members of the 6 Senate. 7 They will come back and recommend changes to the 8 Senate Rules. Those Senate Rules come before the 9 Senate, and there is a -- they're added to the Senate 10 Rules, and then we go to the floor, and we take a vote 11 on the floor. 12 Q. Does the Lieutenant Governor's Office recommend 13 changes to the rules? Is he in charge of that? 14 A. The changes are from the Senators. 15 Q. But is that done by the whole Senate or by a 16 committee of the Senate or a sub group of the Senate? 17 A. There is a general sub group that does the review 18 and comes back with recommendations but the vote is by 19 the Senate as a whole. 20 Q. Who is in that sub group? 21 A. It would be generally someone who would be 22 appointed by the Dean of the Senate, which is a 23 Democrat. 24 Q. Is that Mr. Whitmire? 25 A. Whitmire.</p>
<p>1 my understanding that they placed that as a special 2 order in the Senate Rules. 3 Q. And it's your testimony that with regard to 4 budgets, redistricting and worker's comp that there were 5 special specific -- that they were specified as special 6 orders in the Senate Rules themselves; is that right? 7 A. That's my understanding. 8 Q. And was it your testimony that any bill could be 9 made a special order with a two-thirds vote of the 10 Senate during session? 11 A. It is my testimony that there's two different 12 methods to become a special order. One is that if you 13 amend -- if you either establish it in the Senate Rules 14 that are voted at the start of the session or you do an 15 amendment to the Senate Rules, you can do it that way; 16 or if you want to establish something as a special 17 order, I could move to do a suspension of Rule 5.11 to 18 establish a special order of Senate Bill 6 and if the 19 members chose to establish a special order, they could 20 do that. 21 Q. How many special orders were there in the 2011 22 session? 23 A. I don't know. 24 Q. Were there more than 10? 25 A. I'm sorry, I don't know.</p>	<p>38 39 40 1 Q. Who else besides Mr. Whitmire recommends changes 2 to the rules? 3 A. It's my understanding that any time that 4 happens -- Senate Whitmire is the Dean of the Senate, he 5 runs the meetings, he makes the recommendations. So, 6 any appointments to people to do a review would come 7 from him. 8 Any member that -- if I had something I wanted to 9 change, I could bring it forward but whoever is doing 10 the review -- I could bring it forward and I could offer 11 an amendment. If I disagreed with the rules as they're 12 coming out, I could offer to have an amendment when it 13 comes at the floor, and the amendment would be a 14 majority vote. 15 Q. Who was on the committee in 2011 who recommended 16 the Senate Rules for that session besides Mr. Whitmire? 17 MR. SWEETEN: You can answer as to matters 18 of public record. 19 THE WITNESS: Okay. 20 MR. SWEETEN: And if you don't know -- 21 A. I'm not aware of whether there was a public 22 record on it but I also don't know who they are. So, 23 the answer is the same. I don't know whether it was a 24 public record but I also don't remember who they were. 25 Q. (BY MS. WESTFALL) What is the general purpose of</p>



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<p>1 having a requirement that two-thirds of the Senators 2 vote in favor of suspending the rules or any of the 3 other things you testified about requiring two-thirds? 4 MR. SWEETEN: He's not -- 5 MS. WESTFALL: Mr. Sweeten, that's a 6 general -- 7 MR. SWEETEN: He's not answering the 8 question as phrased, period. So, you can rephrase it if 9 you want to ask a general purpose of a rule. He's not 10 answering a question, "As to everything you just said, 11 what's the purpose of it?" Absolutely not. 12 Q. (BY MS. WESTFALL) I'm going to withdraw my 13 question and try again. 14 What is the general purpose of the two-thirds 15 rule? 16 A. You'll have to be more specific because there's 17 no such thing as a two-thirds rule. There is a 18 two-thirds vote required on specific items, and if you'd 19 like to address a specific item, I'll attempt to answer 20 that. 21 MS. WESTFALL: Mr. Sweeten, as you know, the 22 Court has directed that Senator Fraser sit and answer 23 questions about the general purpose of the two-thirds 24 rule. 25 The Senator has testified that two-thirds</p>	<p>41 1 present. That's per Robert's Rules of Order. 2 Now, there are exceptions to that. There are 3 times where it requires a four-fifths vote. We have 4 multiple four-fifths votes in the legislature, some of 5 them referring to what you're talking about, which is a 6 regular order of business. 7 So, when you refer to the two-thirds rule, I 8 still say there's not something that is clearly the 9 two-thirds rule. 10 We do have a rule that if you want to take 11 something out of the regular order of business, 12 according to Robert's Rules of Order -- which you said 13 what is the purpose, the purpose is to follow 14 parliamentary procedure as defined by Robert's Rules of 15 Order, which we follow, and those are the rules of the 16 parliamentary procedure that we follow. 17 Q. Why is it necessary to have that rule for the 18 Senate? What is the purpose of the rule? 19 MR. SWEETEN: You can answer as to the 20 general purpose of the rule. I think you have. You 21 don't have to give more than what is the general 22 purpose. That's what the Court has provided. 23 So, if you have additional general purpose 24 information, you can answer but you don't have to give 25 additional.</p>
<p>42 1 applies to a variety of rules, and I am asking him to 2 testify as to the purpose of two-thirds vote being 3 required in a variety of settings, and I ask your 4 indulgence of being permitted to ask this question in 5 order to resolve any conflicts that there may be between 6 your witness and the Court. 7 THE WITNESS: I'd like to answer. 8 MR. SWEETEN: Okay. Let me just -- let me 9 explain my objection, which is when you ask the question 10 as phrased, you basically referenced every bit of 11 testimony that he had just testified to about the Senate 12 Rules. There's no possible he could have answered the 13 question that you phrased. 14 If you're asking about why the two-thirds 15 rule applies in certain circumstances, he can give a 16 general purpose answer as to the reason for that since 17 he's indicated he thinks he can answer your question. 18 Q. (BY MS. WESTFALL) Can you answer my question? 19 A. Okay. I would respectfully address the question 20 that I think the Court has ordered, and I would clarify 21 again that the requirement to have a two-thirds vote is 22 a -- we operate under Robert's Rules of Order. 23 If you look in Robert's Rules of Order, if 24 there's an established rule and you want to suspend that 25 rule, generally, it requires a two-thirds vote of those</p>	<p>43 1 A. Robert's Rules of Order have been established 2 through -- I'm not -- I don't have how long they've been 3 in existence but a long time, and it was set up in order 4 that you have something where you have to determine the 5 parliamentary procedure of the order of things as they 6 should proceed. 7 I think it is the accepted method of 8 parliamentary procedure and is -- I was taught that at 9 an early age and have known parliamentary procedure for 10 a long time. 11 But under Robert's Rules of Order, unless it's 12 specifically specified, everything is a majority vote, 13 and if there's going to be an exception to that where 14 you're either suspending or you're having a special 15 request, it is elevated to a higher vote. 16 In Congress, they have to have a 60 -- a 17 three-fifths vote in order to proceed. 18 And our Senate Rules, the Robert's Rules of 19 Order, I believe, recommend a two-thirds vote but we 20 also have if a bill is in the regular order of business 21 during the first 60 days of the session, it takes a 22 four-fifths vote. 23 Q. (BY MS. WESTFALL) Turn your attention to Page 24 22, the notes of rulings under Rule 5.09. 25 A. I'm sorry?</p>



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<p>1 Q. Under the order of considering bills and 2 resolutions, Rule 5.09, there are notes on Page 22. And 3 do you see the first note is, "The order of business as 4 set forth above may be changed by a two-thirds vote of 5 the Senate," and it refers to the Senate Journal and 6 1931? 7 A. Uh-huh. 8 Q. Does that at all relate to the Robert's Rules 9 you've just testified to or do you not know? 10 A. I'm sorry, I can't answer that because I wasn't 11 in the Senate in 1931. I would have loved to have been 12 but I wasn't. 13 Q. Where do Robert's Rules come from? 14 A. I'm sorry, I don't know that either. I know that 15 I was taught Robert's Rules of Order as a 13 year old in 16 school. So, they've been around at least 50ish years. 17 Past that, I don't know. 18 Q. So, I understand your testimony is that the 19 Senate follows this two-thirds procedure in many context 20 throughout the rules based on adherence to the Robert's 21 Rules; is that right? 22 MR. SWEETEN: Objection. Vague. 23 You can answer. You can answer as to the 24 general purpose of the rules. 25 A. It is my belief that we always follow the</p>	<p>45 1 in a variety of settings, in a variety of reasons, is to 2 get general consensus in the Senate. That was her 3 believe of the purpose of this rule. Do you agree with 4 the testimony of Ms. McCoy? 5 MR. SWEETEN: Objection. Assumes facts not 6 in evidence. 7 You can answer. 8 I think he's answered as to general purpose. 9 So, I really don't think this is an appropriate question 10 but -- 11 A. I am a Senator. I'm responsible for my vote. I 12 vote in accordance to Senate Rules. Senate Rules 13 require that you have to follow regular order of 14 business. If you don't do that, then it's required a 15 two-thirds vote to either suspend that rule or suspend 16 others. 17 Q. (BY MS. WESTFALL) So, is it your testimony that 18 two-thirds vote is required for various reasons 19 throughout the Senate Rules because you're adhering to 20 that rule? Is that your testimony? 21 MR. SWEETEN: Objection. Asked and 22 answered. I think he's already provided an answer as to 23 the general purpose. This has been now asked probably 24 five times. So, I think he's answered the question. 25 A. The two-thirds rule applies any time that you are</p>
<p>46 1 Robert's Rules of Order if we can but they're also 2 guided by the Senate Rules. 3 And the Senate Rules are if there's a rule of the 4 Senate and it has been established, it will be the 5 presiding rule of the Senate. 6 Q. (BY MS. WESTFALL) Why does the Senate generally 7 require the support of two-thirds Senators? What is the 8 purpose of that rule? 9 MR. SWEETEN: I think you've asked and 10 answered the question. If you have more on the general 11 purpose, you can answer. Otherwise, you don't have to 12 give more than what the general purpose is. 13 A. The -- any time that a two-thirds vote is 14 required, it's because you are doing a deviation from an 15 established Senate rule. If you're going to deviate 16 from that, you have to suspend the existing Senate rule 17 in order to move to the rule that you're talking about 18 but it could be on a multiple of issues, and it is not 19 just specific to one particular area. The two-thirds 20 suspension vote could apply to many, many topics. 21 Q. (BY MS. WESTFALL) Thank you for your testimony. 22 Getting back to what is the purpose of the 23 two-thirds rule -- strike that. 24 Your Chief of Staff, Janice McCoy, testified in 25 her deposition that the purpose of this two-thirds vote</p>	<p>47 1 going to have to deviate from an existing rule of the 2 Senate. There are multiple times and reasons you do 3 that but any time you deviate from the Senate Rules, it 4 would require at least a two-thirds vote to suspend 5 that, and occasionally a four-fifths vote. 6 Q. (BY MS. WESTFALL) What is the purpose of 7 requiring two-thirds vote when you are deviating from 8 the regular Senate Rules? 9 A. The two-thirds vote rule is -- you know, I 10 believe, is according to Robert's Rules of Order that 11 says that if you have an existing Senate rule that 12 requires a majority vote, if you're going to deviate 13 from that and not stay within that, if you're not going 14 to observe the 48-hour printing rule, if you're not 15 going to observe the 24-hour layout rule and you want to 16 suspend that, it takes a minimum of a two-thirds vote to 17 do that. 18 So, the purpose would be that if you're going to 19 deviate, you have to use that rule to deviate. 20 MS. WESTFALL: Would you mark this 552. 21 (Exhibit 552 marked.) 22 Q. (BY MS. WESTFALL) You've been handed what's been 23 marked US Exhibit 552. Do you recognize this document? 24 A. I believe you've handed me something that says on 25 the face Senate Rules adopted 2009, January 14th. I'm</p>



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<p>1 assuming that everything inside are those rules. I have 2 not read the document but I'm assuming by you handing it 3 to me that that's what you're representing. 4 Q. I will represent to you that it is a full, 5 complete, nonexcerpted copy of the 2009 Senate Rules. 6 A. Okay. 7 Q. I would like you to turn your attention to Rule 8 5.11 in the 2009 rules and Rule 5.11 in the 2011 rules. 9 And tell me when you have a chance -- 10 A. Both of them? 11 Q. Yes. 12 A. Okay. 5.11? 13 Q. Yes. 14 A. Okay. 15 Q. I think it's Page 24 for both sets of rules, if 16 that helps. Are you there, sir? 17 A. I'm there. 18 Q. I believe you testified earlier that Rule 5.11 A 19 means that any bill, resolution, et cetera, may be made 20 a special order for a future time by an affirmative vote 21 of two-thirds members present; is that right? 22 MR. SWEETEN: Do you mean in his first 23 deposition or do you mean in this one? 24 MS. WESTFALL: I mean today. 25 MR. SWEETEN: Objection. Misstates</p>	<p>49 51 1 A. I do believe it's the same. 2 Q. What does Rule 5.11 D do? 3 A. It says, "Notwithstanding Subsection A of this 4 rule, a bill or resolution relating to voter 5 identification requirements reported favorably from the 6 Committee of the Whole Senate may be set as a special 7 order for a time at least 24 hours after the motion is 8 adopted by a majority of the members of the Senate." 9 Q. Why does it refer to a 24-hour period after being 10 reported from the Committee of the Whole? 11 MR. SWEETEN: Don't answer the question. 12 You can answer the general purpose of the rule but you 13 don't have to explain the why something was done a 14 certain way or your mental impressions regarding that. 15 Okay? 16 A. And my answer is going to be that I don't know 17 for sure other than potentially there is a 24-hour 18 layout rule of things moving forward, and I'm assuming 19 that would allow for that 24 hours. 20 Q. (BY MS. WESTFALL) What is the 24-hour layout 21 rule? 22 MR. SWEETEN: You can answer as a general 23 matter of Senate procedure. 24 A. And I'm sorry, you're getting into an area that 25 I'm -- I will tell you what I believe it to be, that</p>
<p>50 1 testimony. 2 You can answer the question. 3 A. 5.11, as we discussed earlier, says that if 4 you're going to establish a special order after -- that 5 was not established initially in the Senate Rules, that 6 would be a deviation from the Senate Rules and would 7 require a two-thirds vote, as many, many other votes do. 8 Q. (BY MS. WESTFALL) And are you referring to Rule 9 5.11 A? 10 A. Yes. 11 Q. Is that true for both the 2009 and the 2011 12 rules? 13 A. Unless I'm missing something, it appears that 14 both of those are exactly the same. 15 Q. So, your testimony is yes, it applies to both 16 rules? 17 A. I'm testifying that what I read as what you 18 represent as the rules, that both of those say exactly 19 the same thing. 20 Q. Turning your attention to Rule 5.11 D for both 21 the 2009 and 2011 rules, could you compare those 22 sections? 23 A. I'm sorry? 24 Q. Could you compare 5.11 D in the 2009 rules and 25 2011 rules and tell me if there are any differences?</p>	<p>52 1 when a bill is reported from committee, that you have to 2 wait 24 hours layout before that bill could be 3 considered by the Senate. 4 Q. (BY MS. WESTFALL) What is the usual rule for how 5 long it takes to go from committee to the floor, the 6 minimum amount of time? 7 A. I believe the -- the rule that I just stated to 8 you that I believe is the rule applies to all bills. 9 Q. So, it's a minimum of 24 hours for all bills; is 10 that correct? 11 A. Yes. 12 Q. If that's the case for all bills, do you know why 13 it would have had to be included in Rule 5.11 D, that it 14 would have to specify 24 hours? 15 A. I do not know. 16 Q. Are there any different rules to -- 17 MR. SWEETEN: Let me -- when you -- pause 18 when you answer and let me make my objection, if it's 19 necessary. 20 THE WITNESS: Okay. 21 MR. SWEETEN: Okay. Go ahead. 22 Q. (BY MS. WESTFALL) Do you know whether there's 23 any difference between bills reported out of the 24 Committee of the Whole Senate and other committees as to 25 the minimum amount of time that is required for the</p>



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<p>1 layout of the bill?</p> <p>2 MR. SWEETEN: You can answer as a general</p> <p>3 matter.</p> <p>4 A. My answer will have to be I am not for sure but</p> <p>5 it is my belief that the same rules apply.</p> <p>6 Q. (BY MS. WESTFALL) So, it would be 24 hours for</p> <p>7 any committee, regardless of whether it's the Committee</p> <p>8 of the Whole or others?</p> <p>9 A. That would be my belief.</p> <p>10 Q. Is it your understanding that under some --</p> <p>11 A. Excuse me. I've got to move that. Sorry.</p> <p>12 Q. Do you want to go off the record? Are you okay?</p> <p>13 A. I'm fine.</p> <p>14 Q. Is it your understanding that bills considered in</p> <p>15 the Committee of the Whole could, under some</p> <p>16 circumstances, be considered immediately by the full</p> <p>17 Senate?</p> <p>18 MR. SWEETEN: You can answer as a general</p> <p>19 matter.</p> <p>20 A. I don't know the answer to that.</p> <p>21 Q. (BY MS. WESTFALL) Is it your understanding that</p> <p>22 Rule 5.11 D was put into place in the Senate Rules</p> <p>23 before the Senate went into session in January, 2011?</p> <p>24 MR. SWEETEN: You can answer.</p> <p>25 A. Would you repeat that?</p>	<p>53</p> <p>1 forward to 2011; is that right?</p> <p>2 A. That is my testimony.</p> <p>3 Q. In 2009 or 2008, when was the first time you</p> <p>4 heard about the possibility of including a provision</p> <p>5 like Rule 5.11 D in the 2009 rules, without revealing</p> <p>6 any communications you've had with any other legislator?</p> <p>7 A. I'd like to go off the record and have a</p> <p>8 discussion with counsel.</p> <p>9 MR. SWEETEN: We can discuss privilege, yes.</p> <p>10 THE WITNESS: I don't think there's a</p> <p>11 problem with answering it.</p> <p>12 MR. SWEETEN: Are you going to have an issue</p> <p>13 with this? Because I'm allowed to talk to him about</p> <p>14 matters relating to privilege. The rules allow for it.</p> <p>15 MS. WESTFALL: Can you direct him on the</p> <p>16 record whatever your instruction is, Mr. Sweeten.</p> <p>17 THE WITNESS: I think I'm okay to answer it.</p> <p>18 MS. WESTFALL: I have a question pending,</p> <p>19 so, I'm reluctant to --</p> <p>20 MR. SWEETEN: That's fine but here's what</p> <p>21 we're going to do: If she's asking you about</p> <p>22 communications that occurred that would be subjective to</p> <p>23 the legislative privilege, do not reveal the substance</p> <p>24 of the communications.</p> <p>25 You can reveal whether you had a</p>
<p>54</p> <p>1 Q. (BY MS. WESTFALL) Let me strike that question.</p> <p>2 Let me try a more artful question.</p> <p>3 Is it your understanding that Rule 5.11 D was</p> <p>4 drafted before the Senate went into session in January,</p> <p>5 2011?</p> <p>6 A. No.</p> <p>7 Q. How do you know that?</p> <p>8 MR. SWEETEN: Don't reveal matters of</p> <p>9 privilege in answering the question. Do you want me to</p> <p>10 go over what those areas would be?</p> <p>11 THE WITNESS: I think I'm fine in answering</p> <p>12 this one.</p> <p>13 MR. SWEETEN: Okay. Well, don't reveal</p> <p>14 communications you've had with other Senators, don't</p> <p>15 reveal communications you've had with leg staff,</p> <p>16 agencies, TLC, and don't reveal your thoughts and mental</p> <p>17 impressions when answering the question. Those would be</p> <p>18 subject to the legislative privilege. Go ahead.</p> <p>19 A. This bill was an existing Senate rule brought</p> <p>20 forward.</p> <p>21 Q. (BY MS. WESTFALL) I'm talking about the -- I'm</p> <p>22 referring you to Rule 5.11 D.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is it your testimony that because it was in the</p> <p>25 2009 rules, it was in place in 2009, so, it carried</p>	<p>55</p> <p>1 conversation or a -- privilege log stuff, like when it</p> <p>2 happened, who with, but do not reveal the substance of</p> <p>3 any sort of communication about Rule 5.11.</p> <p>4 A. Would you repeat the question?</p> <p>5 MS. WESTFALL: Would you read back the</p> <p>6 question, please.</p> <p>7 (Whereupon, the requested testimony was read back</p> <p>8 as follows:</p> <p>9 QUESTION: In 2009 or 2008, when was the first</p> <p>10 time you heard about the possibility of including</p> <p>11 a provision like Rule 5.11 D in the 2009 rules,</p> <p>12 without revealing any communications you've had</p> <p>13 with any other legislator?)</p> <p>14 A. The first I knew of this rule is when it was</p> <p>15 brought forward and voted on by the Senators.</p> <p>16 Q. (BY MS. WESTFALL) Was that in January, 2009?</p> <p>17 A. Yes.</p> <p>18 Q. You had never heard of any communication about</p> <p>19 the concept of Rule 5.11 D prior to that time?</p> <p>20 A. No.</p> <p>21 Q. Was redistricting in 2003 designated as a special</p> <p>22 order in the rules?</p> <p>23 A. I'm sorry, I don't know. I believe it was but I</p> <p>24 do not know.</p> <p>25 Q. Was redistricting -- was any redistricting bill</p>



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<p>57</p> <p>1 that you've ever been involved in, was it considered by 2 the Committee of the Whole? 3 A. Again, I don't have a recollection. I don't 4 remember. 5 Q. Are you aware of any other bill besides voter ID 6 that has been both subject to being set forth as a 7 special order in the rules and considered in the 8 Committee of the Whole? 9 A. You've asked a very broad question, and I 10 can't -- I can't give you a yes answer on that because I 11 can't say that I know of issues that were both special 12 orders and Committee of the Whole because we have had 13 some of each but I don't know that they were connected. 14 I can't say. 15 Q. (BY MS. WESTFALL) Was there any time in the 16 2000 -- prior to the 2009 legislature that you became 17 aware of any discussions whatsoever about amending the 18 Senate Rules for voter ID? 19 MR. SWEETEN: Objection. Asked and 20 answered. 21 THE WITNESS: What did you just say? 22 MR. SWEETEN: I just said objection. Asked 23 and answered. 24 THE WITNESS: That means I've already 25 answered it?</p>	<p>59</p> <p>1 A. No. You're saying were there -- was I aware of 2 it? I was not aware of any conversations about how it 3 would be considered, no. 4 MR. SWEETEN: Same objection to the 5 question. 6 Q. (BY MS. WESTFALL) Did you hear of any 7 conversations in 2009 or 2010 about how voter ID bills 8 would be handled procedurally in the 2011 legislature? 9 MR. SWEETEN: Objection. Vague. Objection. 10 Compound. 11 A. I was aware that the rule would be carried -- or 12 would be recommended to be carried forward, not to be 13 removed. I knew that the rule was in the Senate Rules. 14 And I need to clarify my answer. 15 MR. SWEETEN: Don't reveal the substance of 16 any communications you've had with anyone. 17 A. I need to clarify that I was aware that the rule 18 was existing in 2009. And when the rules were laid out 19 in 2011, I read the rules, and I saw that the rule was 20 still there. So, that was when I was aware that it 21 would be carried forward, but no, that was the only 22 communication. 23 Q. (BY MS. WESTFALL) So, prior to seeing the rules 24 in 2011, you were not aware of any -- not a single 25 conversation prior to that time about carrying forward</p>
<p>58</p> <p>1 MR. SWEETEN: That's my objection but you 2 can answer if you can. I'm objecting to her question as 3 already having been asked and answered. 4 A. My answer is the same as I just gave, that I have 5 not -- I was not made aware or hadn't discussed it prior 6 to it coming forward in the rules recommendation for a 7 vote. It was laid out and explained prior to a vote of 8 the Senate, and that's the first I saw of it. 9 Q. (BY MS. WESTFALL) In 2007 -- strike that. 10 Was there a time in 2008 when you heard anything 11 about any procedures related to how voter ID would be 12 handled in the Senate in 2009? 13 MR. SWEETEN: Objection. Vague. Objection. 14 Asked and answered. 15 You can answer. 16 A. No. The answer is no. 17 Q. (BY MS. WESTFALL) You sponsored the voter ID 18 bill in the Senate in 2009; isn't that right? 19 A. Yes. 20 Q. That was Senate Bill 362; is that correct? 21 A. Yes. 22 Q. Is it your testimony that you were not aware of 23 any conversations prior to the filing of that bill 24 related to how it would be considered procedurally in 25 the Senate in 2009?</p>	<p>60</p> <p>1 the rule from 2009 to 2011? 2 THE WITNESS: Privileged communication? 3 Q. (BY MS. WESTFALL) Without revealing the 4 substance of the communication. 5 MR. SWEETEN: She's asking did a 6 communication occur but don't answer as to the substance 7 of any communication, just if there was a communication. 8 A. Yes. Yes. 9 Q. (BY MS. WESTFALL) I'm sorry, we had the -- 10 A. You asked was there a communication, and the 11 answer is yes. 12 Q. When was the first communication that you had 13 about the procedures for voter ID in 2011? 14 A. Probably a month from session. 15 Q. Would that be sometime in December, 2010? 16 A. Yes. 17 Q. Were you, yourself a party to that communication? 18 A. Yes. 19 Q. Who else was in the conversation? 20 THE WITNESS: Can I answer that question? 21 MR. SWEETEN: You can answer as to who was 22 another party to the conversation. Do not reveal the 23 specifics. 24 A. Senator Williams. 25 Q. (BY MS. WESTFALL) Was anyone else involved in</p>



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<p>61</p> <p>1 that conversation?</p> <p>2 A. No.</p> <p>3 Q. It was only the two of you?</p> <p>4 A. Yes.</p> <p>5 Q. Was that an in-person discussion?</p> <p>6 A. Yes.</p> <p>7 Q. Were your staff people there?</p> <p>8 A. I'm sorry. Just a second. I need to retract the</p> <p>9 question about the date. I will say it was an in-person</p> <p>10 but it would have been at the start of the session</p> <p>11 because I don't believe I saw him in December. So, it</p> <p>12 would have been in and around the first -- either the</p> <p>13 day before or a day after the start of session would be</p> <p>14 that conversation.</p> <p>15 Q. And that was the first conversation that you had</p> <p>16 about procedures --</p> <p>17 A. Yes.</p> <p>18 Q. -- in regards to Senate Bill 14?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any other conversations besides that</p> <p>21 one with Senator Williams about the procedures for</p> <p>22 Senate Bill 14?</p> <p>23 A. No.</p> <p>24 Q. Did you have any conversations with anyone in</p> <p>25 Mr. Dewhurst's office?</p>	<p>63</p> <p>1 is that correct?</p> <p>2 A. Yes, that is what I'm referring to.</p> <p>3 Q. Was that in November or December, 2010?</p> <p>4 A. It was likely the first of December because you</p> <p>5 can't file a bill until 30 days prior to, and in order</p> <p>6 to establish that I was going to refile, I'm sure --</p> <p>7 MR. SWEETEN: Hold on a minute. Do not</p> <p>8 start expressing reasons for why you communicated with</p> <p>9 him or the substance of that communication. She's just</p> <p>10 asking you did a communication occur.</p> <p>11 A. Approximately December the 8th of 2008 would have</p> <p>12 been in that range when it would have happened.</p> <p>13 Q. (BY MS. WESTFALL) Are you talking about 2008 or</p> <p>14 2010, about 362 or --</p> <p>15 A. 362 was 2008. 2010 for Senate Bill 14.</p> <p>16 Q. Did you advise the Lieutenant Governor's Office</p> <p>17 approximately the same time in December --</p> <p>18 A. I'm sorry, your -- I need to retract that. You</p> <p>19 led me down a path I didn't mean to go.</p> <p>20 I don't remember a communication with them on</p> <p>21 362. I do remember a communication on Senate Bill 14.</p> <p>22 Q. And that was approximately December 8, 2010; is</p> <p>23 that right?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. And that was the communication between you or</p>
<p>62</p> <p>1 MR. SWEETEN: And when you say</p> <p>2 conversations, just general conversations, are you</p> <p>3 asking about the timing of the --</p> <p>4 MS. WESTFALL: The procedures to be employed</p> <p>5 for Senate Bill 14.</p> <p>6 MR. SWEETEN: Okay.</p> <p>7 Q. (BY MS. WESTFALL) Did you have any conversations</p> <p>8 with anyone in Mr. Dewhurst's office?</p> <p>9 A. And I'm going to qualify your question. We</p> <p>10 advised Governor Dewhurst's office --</p> <p>11 MR. SWEETEN: Do not tell her what you</p> <p>12 advised or discussed or the substance of the</p> <p>13 conversation. You can tell whether you had a</p> <p>14 conversation, the existence of the communication only.</p> <p>15 A. There was a one-way conversation.</p> <p>16 Q. (BY MS. WESTFALL) Was that conversation between</p> <p>17 you or your office and Mr. Dewhurst's office about</p> <p>18 Senate Bill 14 --</p> <p>19 A. Yes.</p> <p>20 Q. -- prior to the session?</p> <p>21 A. Yes.</p> <p>22 Q. Was there more than one communication?</p> <p>23 A. No.</p> <p>24 Q. I believe you testified earlier that you advised</p> <p>25 the Lieutenant Governor's Office that you were filing;</p>	<p>64</p> <p>1 your office and Mr. Dewhurst's office?</p> <p>2 A. Yes.</p> <p>3 Q. Related to the filing of Senate Bill 14; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Other than the communication with Senator</p> <p>7 Williams about procedures for Senate Bill 14 in January</p> <p>8 and this communication with Mr. Dewhurst, do you recall</p> <p>9 any other communications with any of the members of the</p> <p>10 Senate, House, Governor's Office, Lieutenant Governor's</p> <p>11 Office about the filing of Senate Bill 14?</p> <p>12 A. You've asked a very broad question. Not with the</p> <p>13 Governor, not with House members but after we started</p> <p>14 session, there were communication with other Senators</p> <p>15 that they were aware that I had filed it.</p> <p>16 Q. Okay. But prior to the session starting, there</p> <p>17 were no other communications besides with Mr. Dewhurst's</p> <p>18 office and Mr. Williams' office?</p> <p>19 MR. SWEETEN: We're talking about the '11</p> <p>20 session, right?</p> <p>21 MS. WESTFALL: Correct.</p> <p>22 A. No.</p> <p>23 Q. (BY MS. WESTFALL) May the Governor designate</p> <p>24 legislation as emergency legislation?</p> <p>25 A. May as in does he have the ability?</p>



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<p>65</p> <p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. What allows the Governor to designate legislation</p> <p>4 as emergency legislation?</p> <p>5 A. The Governor can -- you know, he can declare</p> <p>6 anything an emergency legislation.</p> <p>7 MS. WESTFALL: Could you mark this as 553.</p> <p>8 (Exhibit 553 marked.)</p> <p>9 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>10 marked US Exhibit 553.</p> <p>11 A. Could we go off the record?</p> <p>12 Q. Certainly.</p> <p>13 (Short recess.)</p> <p>14 MS. WESTFALL: Let's go back on the record.</p> <p>15 Q. (BY MS. WESTFALL) Before the break, you had been</p> <p>16 handed what's been marked as US 553. Do you recognize</p> <p>17 this document?</p> <p>18 A. Appears to be the Senate journal for Monday,</p> <p>19 January 24th, began the session of 1:38 p.m.</p> <p>20 Q. This was 2011; is that correct?</p> <p>21 A. 2011.</p> <p>22 Q. Turning your attention to the second page of the</p> <p>23 document, which is the 54th page of the Senate Journal,</p> <p>24 do you see down toward the bottom of the page it has a</p> <p>25 message from the Governor?</p>	<p>67</p> <p>1 A. It doesn't refresh my memory of the power of the</p> <p>2 Governor. I'm very aware of the power of the Governor.</p> <p>3 No, it does not refresh my memory.</p> <p>4 Q. (BY MS. WESTFALL) What is the power of the</p> <p>5 Governor to designate certain areas of legislation as</p> <p>6 emergency legislation?</p> <p>7 A. I'm going to clarify your question. You're</p> <p>8 asking me what power does the Governor have to specify a</p> <p>9 piece of legislation?</p> <p>10 The Governor has the -- he takes the authority</p> <p>11 that he can declare any issue an emergency. Generally,</p> <p>12 he does not specify a specific bill, which is what you</p> <p>13 referred to.</p> <p>14 So, as you stated the question, that would be</p> <p>15 incorrect because he generally does not mention or state</p> <p>16 a specific piece of legislation. He will specify an</p> <p>17 issue.</p> <p>18 Q. Where does he get that power from?</p> <p>19 MR. SWEETEN: You can answer as a general</p> <p>20 matter.</p> <p>21 A. You're asking where does the Governor get that</p> <p>22 power from?</p> <p>23 Q. (BY MS. WESTFALL) Yes.</p> <p>24 A. You're implying that he has a power. There is no</p> <p>25 power associated with it because his designation has no</p>
<p>66</p> <p>1 A. Yes.</p> <p>2 Q. What does that message indicate?</p> <p>3 A. Would you like me to read the message to you?</p> <p>4 Q. Or you could summarize it, whatever you'd like.</p> <p>5 And I'd like to direct your attention to the first such</p> <p>6 message.</p> <p>7 MR. SWEETEN: You can answer based on the</p> <p>8 text of the document.</p> <p>9 A. Would you like me to describe it?</p> <p>10 Q. (BY MS. WESTFALL) Yes, please.</p> <p>11 A. It appears that a message from the Governor was</p> <p>12 read, the following message on January 20th, 2011, "I,</p> <p>13 Rick Perry, Governor of the State of Texas, do hereby</p> <p>14 submit the following emergency matter for immediate</p> <p>15 consideration to the Senate and House of Representatives</p> <p>16 of the 82nd Legislature, now convened. Legislation that</p> <p>17 requires a voter to present proof of identification when</p> <p>18 voting. Respectfully submitted, Rick Perry, Governor</p> <p>19 over the State of Texas, January 20th, 2011."</p> <p>20 Q. Thank you.</p> <p>21 And does that refresh your recollection as to the</p> <p>22 source of the Governor's power for making emergency</p> <p>23 designations of bills?</p> <p>24 MR. SWEETEN: Objection. Foundation. Go</p> <p>25 ahead.</p>	<p>68</p> <p>1 force of power or affect. So, I would not use the word</p> <p>2 power.</p> <p>3 The Governor can declare or submit -- which his</p> <p>4 wording is very clear here. He submits the following</p> <p>5 emergency matter. He submits it to the Legislature but</p> <p>6 it has no force of power.</p> <p>7 Q. And referring back to his message that you just</p> <p>8 testified to, do you see that it indicates that he is</p> <p>9 designating voter ID as an emergency legislation under</p> <p>10 his powers under the Texas Constitution?</p> <p>11 A. Your representation is not correct. He is not</p> <p>12 designating. It very clearly says that, "Pursuant to</p> <p>13 Section 5 of the Texas Constitution, by this special</p> <p>14 message, I do submit the following emergency matter for</p> <p>15 immediate" -- he is submitting it for consideration.</p> <p>16 There is no power that goes with that that is in any way</p> <p>17 implied by the Texas Constitution.</p> <p>18 The Constitution allows him to declare something</p> <p>19 an emergency but it has no force past that.</p> <p>20 Q. Can you explain when he designates an area of</p> <p>21 legislation as emergency legislation, how does he do it?</p> <p>22 MR. SWEETEN: Do you mean -- I'm sorry --</p> <p>23 Q. (BY MS. WESTFALL) As a general matter.</p> <p>24 MR. SWEETEN: He's not going to talk about</p> <p>25 the times or the Governor's motivation in doing that.</p>



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<p>69</p> <p>1 That would be subject to privilege and would call for 2 speculation.</p> <p>3 Are you asking in what means it's done?</p> <p>4 MS. WESTFALL: Yes.</p> <p>5 Q. (BY MS. WESTFALL) I'm asking procedurally, how 6 does the Governor --</p> <p>7 A. You need to rephrase your question because your 8 question didn't ask that.</p> <p>9 Q. I'm going to withdraw my question and ask you, 10 procedurally, how does the Governor submit an area of 11 legislation as an emergency matter?</p> <p>12 A. I do not know the procedure that the Governor 13 does. You know, I know when I read about it but I don't 14 know the procedure of how it's done.</p> <p>15 Q. Thank you.</p> <p>16 When the Governor submits something as an 17 emergency matter to the legislature, what affect does 18 that have?</p> <p>19 MR. SWEETEN: You can answer as a general 20 procedural matter.</p> <p>21 A. None.</p> <p>22 Q. (BY MS. WESTFALL) You can totally disregard it, 23 as a Senator?</p> <p>24 A. When you say "totally disregard," obviously, if 25 the Governor issued it, I noted that it was important to</p>	<p>71</p> <p>1 occasionally, it is considered but also occasionally, it 2 is not considered in the 60 days. So, there's not a set 3 pattern of when an issue would be considered.</p> <p>4 Q. (BY MS. WESTFALL) Based on the public record, 5 was there any consequence to the Governor's designation 6 of proof of identification when voting as an emergency 7 legislative matter in 2011?</p> <p>8 MR. SWEETEN: Don't --</p> <p>9 MS. WESTFALL: As a matter of public record, 10 Mr. Sweeten.</p> <p>11 MR. SWEETEN: Still you're asking for his 12 thoughts, mental impressions as to what the consequence 13 of the Governor declaring this an emergency item was.</p> <p>14 So, if you want to ask him if something was 15 expressed regarding that that he recalls in the public 16 record, that's one thing but you're asking him whether 17 or not -- what the procedural consequences were, and 18 that reveals legislative privilege.</p> <p>19 I'm going to instruct you, on that basis, 20 not to answer the question.</p> <p>21 Q. (BY MS. WESTFALL) Are you following advice of 22 counsel?</p> <p>23 A. I would like the question reasked again.</p> <p>24 MS. WESTFALL: Would you reread it, please, 25 Ms. Court Reporter?</p>
<p>70</p> <p>1 him but in this case, if he would have really thought it 2 was important, I think they would have picked up the 3 phone and called me. I read about it in the newspaper.</p> <p>4 Q. Are there any procedural consequences of the 5 Governor's designation of a particular area as emergency 6 legislation?</p> <p>7 MR. SWEETEN: You can answer as a general 8 matter.</p> <p>9 A. There's no consequences of this and, in fact, 10 there are numerous issues that are declared as emergency 11 items that never come before the Legislature.</p> <p>12 Q. (BY MS. WESTFALL) Is it your testimony that it's 13 totally within the Senate's discretion as to how to 14 respond to an emergency designation from the Governor?</p> <p>15 A. I would agree with that observation.</p> <p>16 Q. So, you would -- strike that.</p> <p>17 Emergency legislation, as designated by the 18 Governor, is not always considered within the first 19 60 days of session, is that your understanding?</p> <p>20 A. No, it is not always considered.</p> <p>21 Q. Is it usually considered within the first 60 days 22 of session?</p> <p>23 MR. SWEETEN: You can answer as a general 24 matter.</p> <p>25 A. It is not always considered, and there's --</p>	<p>72</p> <p>1 (Whereupon, the requested testimony was read back 2 as follows:</p> <p>3 QUESTION: Based on the public record, was there 4 any consequence to the Governor's designation of 5 proof of identification when voting as an 6 emergency legislative matter in 2011?)</p> <p>7 MR. SWEETEN: If you answer the question, it 8 would reveal legislative privilege unless a specific -- 9 something was uttered on the public record.</p> <p>10 A. If you'd like to ask me about the first half of 11 the question and not specify about Senate Bill 14, I 12 would be glad to answer, if you would like to repeat the 13 question up to the point that you address Senate Bill 14 14.</p> <p>15 Q. (BY MS. WESTFALL) I'll ask a different question.</p> <p>16 A. Are you withdrawing that question?</p> <p>17 Q. I'm going to let it be. I'm going to ask you 18 another question because I think you've asserted 19 privilege or your counsel has directed you to assert 20 privilege.</p> <p>21 A. No, I have not done that at all. The question is 22 still before us. I'm telling you that the question that 23 you're asking, the majority of the question I'm willing 24 to answer but as you asked it in reference to a specific 25 piece of legislation, which was Senate Bill 14, that</p>



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<p>73</p> <p>1 would you force me to assert privilege.</p> <p>2 So, if you will ask me the question on the</p> <p>3 general matter without it being specific to that issue,</p> <p>4 I'll be glad to answer your question.</p> <p>5 Q. Thank you, sir.</p> <p>6 Were there any -- strike that.</p> <p>7 A. Did you withdraw your last question?</p> <p>8 Q. No, it's pending but you've answered it, so,</p> <p>9 we're on to another --</p> <p>10 When the Governor designated legislation</p> <p>11 requiring a voter to present proof of ID when voting in</p> <p>12 January of 2011, were there any consequences or effects</p> <p>13 in the Senate on the public record?</p> <p>14 MR. SWEETEN: Don't answer.</p> <p>15 Objection. Legislative privilege.</p> <p>16 Q. (BY MS. WESTFALL) Senator, are you following the</p> <p>17 advice of counsel?</p> <p>18 A. Privileged. And I would ask you to reask the</p> <p>19 question.</p> <p>20 Q. Were there any procedural consequences on the</p> <p>21 record as a result of the Governor's designation of</p> <p>22 voter ID as an emergency legislative matter --</p> <p>23 MR. SWEETEN: Same objection.</p> <p>24 Q. (BY MS. WESTFALL) -- in 2011?</p> <p>25 MR. SWEETEN: Same objection on legislative</p>	<p>75</p> <p>1 Q. When did you first hear about the Governor</p> <p>2 designating proof of voter ID in 2011 as emergency</p> <p>3 legislation?</p> <p>4 A. I read about it in the paper.</p> <p>5 Q. Are you aware of any communications about the</p> <p>6 Governor's designation of voter ID as emergency</p> <p>7 legislation prior to it appearing in the Senate Journal?</p> <p>8 A. With who?</p> <p>9 Q. With anyone.</p> <p>10 A. I'm not aware of any communications.</p> <p>11 Q. Are you aware of any conversations or other</p> <p>12 communications regarding the timing of consideration of</p> <p>13 Senate Bill 14 by the Senate?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any conversations regarding</p> <p>16 consideration of the Senate Bill 14 by the Committee of</p> <p>17 the Whole prior to the session starting?</p> <p>18 A. Prior to the session starting?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. When did you first learn that the Committee of</p> <p>22 the Whole would be considering Senate Bill 14?</p> <p>23 A. And I believe you asked me that question in the</p> <p>24 last deposition, and the answer remains the same, is</p> <p>25 that my recollection is that I was advised by the</p>
<p>74</p> <p>1 privilege.</p> <p>2 A. If you will ask the first part of the question as</p> <p>3 a general sense about any emergency legislation and not</p> <p>4 specify to Senate Bill 14, I'll be glad to answer the</p> <p>5 question.</p> <p>6 Q. (BY MS. WESTFALL) Are there any procedural</p> <p>7 consequences when the Governor generally designates</p> <p>8 legislation as an emergency?</p> <p>9 MR. SWEETEN: You can answer the question.</p> <p>10 A. No.</p> <p>11 Q. (BY MS. WESTFALL) I believe you testified the</p> <p>12 Senate can take it or leave it; is that right?</p> <p>13 A. Did I say that?</p> <p>14 Q. No, but I'm summarizing.</p> <p>15 A. I believe you're putting words in my mouth, and I</p> <p>16 don't believe I said that. I said there were no</p> <p>17 consequences.</p> <p>18 Q. The Senate may or may not take into consideration</p> <p>19 the Governor's wishes?</p> <p>20 A. The Senate will do their wishes.</p> <p>21 Q. As a general matter, when the Governor designates</p> <p>22 an issue area as emergency legislation, does the Senate</p> <p>23 consider such legislation within the first 60 days?</p> <p>24 A. There is no general rule. Every issue is</p> <p>25 considered on its own merit.</p>	<p>76</p> <p>1 Lieutenant Governor's office that I would be recognized</p> <p>2 on Senate Bill 14 on X date. It was about two days</p> <p>3 before that happened.</p> <p>4 Q. Is it your testimony that you filed Senate Bill</p> <p>5 14 before the session started and that you were not</p> <p>6 aware or party to any communications about how the</p> <p>7 Senate would consider Senate Bill 14 until you had that</p> <p>8 conversation or communication with Mr. Dewhurst's</p> <p>9 office?</p> <p>10 A. I'd like the question back. You've got -- I've</p> <p>11 got a clarification I've got to make. I need to hear</p> <p>12 the question again.</p> <p>13 MS. WESTFALL: Could you read it back?</p> <p>14 (Whereupon, the requested testimony was read back</p> <p>15 as follows:</p> <p>16 QUESTION: Is it your testimony that you filed</p> <p>17 Senate Bill 14 before the session started and</p> <p>18 that you were not aware or party to any</p> <p>19 communications about how the Senate would</p> <p>20 consider Senate Bill 14 until you had that</p> <p>21 conversation or communication with Mr. Dewhurst's</p> <p>22 office?)</p> <p>23 MR. SWEETEN: Objection. Compound.</p> <p>24 THE WITNESS: Am I free to answer?</p> <p>25 MR. SWEETEN: Yeah, to the extent -- just</p>



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<p>77</p> <p>1 don't reveal legislatively privileged matter or the 2 substance of any communication. 3 A. I can't answer your question, and the reason I 4 can't answer your question is the bill that was filed 5 before session started, the one before, was given 6 another number. I don't recall what that number was but 7 after we got into session -- or about the time we 8 started session, we refiled the exact same bill but they 9 designated a new number on the bill administratively. I 10 don't know why that happened but we refiled the bill. 11 So, the question, as you asked it, is not 12 correct. If you'd like to rephrase it and say the bill 13 that I filed, I'll be glad to answer your question. 14 Q. (BY MS. WESTFALL) Thank you for your testimony. 15 Did you have any communications with anyone about 16 that previous bill prior to the session starting? 17 A. With anyone? 18 Q. With anyone. 19 A. Yes. 20 Q. When was the first conversation that you had in 21 that regard? 22 A. Probably in the summer of 2010. 23 Q. Were you a party to that communication? 24 A. Yes. 25 Q. Who else was a party to that communication?</p>	<p>79</p> <p>1 When was that conversation? 2 A. Summer of 2010. 3 Q. Were you a party to that conversation? 4 A. Yes. 5 Q. Who else was involved in that conversation? 6 A. Myself. 7 Q. Who was the other party? 8 A. The President of the Senate of Indiana. 9 Q. What is the name of that individual? 10 A. Senator David Long. 11 Q. Was that at the meeting of Senate Presidents -- 12 A. Yes. 13 Q. -- that you had testified to earlier? 14 A. Yes. 15 Q. Did you have any other conversations with anyone 16 else about the voter ID bill that you were filing? 17 A. I believe I had a conversation with the Senate 18 President from Georgia. 19 Q. Was that at that same meeting? 20 A. Same meeting. 21 Q. Are there any other conversations that you had 22 about the bill -- the voter ID bill that you were filing 23 in 2010 for the 2011 session? 24 A. Yes. 25 Q. Who was that with?</p>
<p>78</p> <p>1 A. Myself and the person that I was talking to. 2 Q. And who was that individual? 3 A. Skipper Wallace. 4 Q. That was in the summer of 2010? 5 A. It's my recollection it was sometime prior to the 6 start of the session in a three-month period. I don't 7 remember when it was but it's my recollection that we 8 had a conversation some time prior to the session. 9 Q. Did you only have one conversation with 10 Mr. Wallace? 11 A. I can't answer that because I don't remember. 12 Q. Was anyone else a party to that conversation? 13 A. No. 14 Q. Was that a phone conversation or in-person? 15 A. In-person. 16 Q. Was that in your office? 17 A. No. It would have likely been at a political 18 event that we were both attending, and it was a passing 19 conversation. 20 Q. Did you have any other conversations with anyone 21 besides Mr. Wallace about the previously numbered voter 22 ID bill that you were going to file in 2010 -- prefile 23 in 2010 for the 2011 session? Sorry. 24 A. Yes. 25 Q. Who else -- strike that.</p>	<p>80</p> <p>1 A. With the Senate President of Illinois, John 2 Culbertson, a Democrat. 3 Q. Were there any other conversations about the bill 4 that you were filing related to voter ID not related to 5 that meeting that you had with the Senate Presidents? 6 A. No. 7 Q. Do you receive constituent mail in your Senate 8 office? 9 A. I don't personally but I'm sure there is mail 10 that comes in to the Senate office. 11 Q. How is that mail received? Do you receive it by 12 E-mail? Do you receive hard copies of letters? 13 A. I don't know. I believe that we receive, for 14 sure, postage, and I'm assuming we receive some E-mail 15 communication. I'm not privy to that because, as I told 16 you, I don't do E-mails. 17 Q. Is there a staff person in your office who 18 handled constituent communication in 2011 for you? 19 A. Janice McCoy. 20 Q. Is she the sole person in your office who handled 21 constituent communication in 2011? 22 A. I don't know the answer to that. 23 MR. SWEETEN: Okay. We're going to get into 24 constituent communication, so, let's have a discussion 25 on that.</p>



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<p>81</p> <p>1 When we began the deposition, you indicated</p> <p>2 that you wanted to discuss those issues with Senator</p> <p>3 Fraser, and I indicated that I didn't believe that that</p> <p>4 was what the Court has ordered us to do. It's not part</p> <p>5 of the Court's order.</p> <p>6 Nevertheless, you pointed out that we did go</p> <p>7 with Representative Harless and they made a motion with</p> <p>8 the Court to allow additional questioning on that issue.</p> <p>9 I've spoken with Senator Fraser regarding</p> <p>10 the issue, and we've determined that in view of the fact</p> <p>11 that the Court has ordered that with respect to</p> <p>12 Representative Harless, that we're going to allow you to</p> <p>13 ask questions about constituent communications as you've</p> <p>14 asked to do.</p> <p>15 At the same time we would ask that just as</p> <p>16 the Court limited Representative Harless' questioning on</p> <p>17 that issue to an hour, I think that is a very reasonable</p> <p>18 request, so, we would assert that if we're getting into</p> <p>19 that area, that we limit the questioning of that, if</p> <p>20 that's agreeable to you, Counsel.</p> <p>21 MS. WESTFALL: I appreciate the</p> <p>22 accommodation. I don't think it will be a lengthy</p> <p>23 examination on constituent correspondence. We have not</p> <p>24 received a great deal of correspondence produced from</p> <p>25 Senator Fraser's office.</p>	<p>83</p> <p>1 MS. WESTFALL: I'm grateful, Mr. Sweeten.</p> <p>2 Q. (BY MS. WESTFALL) Senator, is there someone in</p> <p>3 your office who responds to constituent correspondence?</p> <p>4 A. I don't know the answer to that.</p> <p>5 Q. Do you know whether you generally do respond to</p> <p>6 constituent correspondence or do you just receive the</p> <p>7 communications?</p> <p>8 A. We are not very big on response. So, I feel sure</p> <p>9 that there are people that we might respond to but we</p> <p>10 don't communicate a lot in my office.</p> <p>11 Q. Does Ms. McCoy ever share any constituent</p> <p>12 communication with you that she has reviewed?</p> <p>13 A. She occasionally will come in my office and say,</p> <p>14 "We heard from Skipper and I told him X."</p> <p>15 MR. SWEETEN: Now, as you're answering these</p> <p>16 questions, I want to remind you of the legislative</p> <p>17 privilege.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. SWEETEN: She can ask you questions</p> <p>20 about constituent communications. She can ask about the</p> <p>21 substance of those communications but in answering those</p> <p>22 questions, I don't want you to reveal your mental</p> <p>23 impressions or thoughts about any specific legislation.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. SWEETEN: They are still subject to the</p>
<p>82</p> <p>1 So, I believe as things stand currently,</p> <p>2 that it will not take more than one hour to</p> <p>3 examine Senator Fraser on constituent communication.</p> <p>4 MR. SWEETEN: You didn't answer my question.</p> <p>5 MS. WESTFALL: I sure didn't. As things</p> <p>6 stand right now -- and it's my general practice not to</p> <p>7 promise to limit my examination to a certain period of</p> <p>8 time but I do not foresee as of currently, unless we get</p> <p>9 into extensive communications about communications, that</p> <p>10 it will go longer than an hour. I can make that</p> <p>11 representation to you right now, Counsel.</p> <p>12 MR. SWEETEN: And I assume we're finished</p> <p>13 with the other issues, because I want to make a clean --</p> <p>14 I want to have an idea of where we are. Is that</p> <p>15 correct?</p> <p>16 MS. WESTFALL: Yes, unless -- I'm going to</p> <p>17 hand the podium to counsel for defendant-intervenors,</p> <p>18 who may have additional questions in that regard.</p> <p>19 MR. SWEETEN: Mr. Dunn, do you have any idea</p> <p>20 of what sort of time your examination will be?</p> <p>21 MR. DUNN: At the moment, five minutes or</p> <p>22 less.</p> <p>23 MR. SWEETEN: I accept. Okay. So, we'll</p> <p>24 go -- we'll march forward in the spirit of accommodation</p> <p>25 and allow these questions to proceed.</p>	<p>84</p> <p>1 legislative privilege.</p> <p>2 MS. WESTFALL: And, Mr. Sweeten, just to be</p> <p>3 clear before we exam on some exhibits related to</p> <p>4 constituent communications, it is the Court's order that</p> <p>5 communications between legislators and constituents,</p> <p>6 lobbyists and interest groups are not within the</p> <p>7 legislative privilege. So, those communications both</p> <p>8 ways must be produced.</p> <p>9 The Court also indicated, as you have</p> <p>10 directed your witness, that questioning a Legislator</p> <p>11 about -- to the extent it would require the Legislator</p> <p>12 to reveal subjective motivations is covered within the</p> <p>13 privilege. So, I just want to make sure we're in</p> <p>14 agreement with the scope of the privilege before I</p> <p>15 examine the witness.</p> <p>16 MR. SWEETEN: I think what you said is what</p> <p>17 I said --</p> <p>18 MS. WESTFALL: Right.</p> <p>19 MR. SWEETEN: -- which is he's not going to</p> <p>20 reveal his mental impressions about -- for example, if</p> <p>21 constituent X wrote something, he's not going to say why</p> <p>22 he said something to them or he's not going to say what</p> <p>23 he did as a result of something that was told to him.</p> <p>24 He will reveal, to the extent he can recall,</p> <p>25 the substance of the communication, the approximate</p>



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<p>1 date, means of communication.</p> <p>2 MS. WESTFALL: In both directions, right?</p> <p>3 MR. SWEETEN: That's correct, if we're</p> <p>4 talking about a constituent. I think that's the Court's</p> <p>5 order.</p> <p>6 MS. WESTFALL: Okay. Could you mark this US</p> <p>7 554.</p> <p>8 (Exhibit 554 marked.)</p> <p>9 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>10 marked US 554. Do you recognize this document?</p> <p>11 A. No.</p> <p>12 Q. Do you see that it was from Janice McCoy's</p> <p>13 E-mail?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have any reason to believe that Janice</p> <p>16 McCoy did not receive this E-mail?</p> <p>17 A. Well, you're assuming that I understand how</p> <p>18 E-mail works.</p> <p>19 Q. Do you not know whether this was received by</p> <p>20 Ms. McCoy, is that your testimony?</p> <p>21 A. I don't know the answer. No, I do not know. I</p> <p>22 have not seen it, and no, I don't know.</p> <p>23 Q. Do you know Brenda Payne?</p> <p>24 A. No.</p> <p>25 Q. Is Abilene, Texas within your district?</p>	<p>85</p> <p>1 A. I have no way of knowing. I didn't see this</p> <p>2 E-mail or others, so, I have no way of knowing.</p> <p>3 Q. (BY MS. WESTFALL) Do you know whether others</p> <p>4 among your constituents or interest groups or advocacy</p> <p>5 groups expressed the view that there are a lot of</p> <p>6 undocumented people who have student IDs?</p> <p>7 MR. SWEETEN: You can answer based on the</p> <p>8 public record or based upon communications from</p> <p>9 constituents.</p> <p>10 A. I have no communications that I can fall back on</p> <p>11 that stated that view that I saw.</p> <p>12 Q. (BY MS. WESTFALL) Sitting here today, is that</p> <p>13 the first time you've heard that argument that a lot of</p> <p>14 undocumented people have student IDs in Texas?</p> <p>15 MR. SWEETEN: Don't reveal matters of</p> <p>16 privilege in answering the question.</p> <p>17 A. There was debate --</p> <p>18 THE WITNESS: If it's a matter of public</p> <p>19 debate, there's no problem?</p> <p>20 MR. SWEETEN: There's no problem with that</p> <p>21 but if there's a communication --</p> <p>22 A. There was a debate in 2009 and 2011 discussing</p> <p>23 about the type of identification and if the</p> <p>24 identification was proper and could be -- if someone</p> <p>25 could get an ID that was illegal, and that's not -- it's</p>
<p>86</p> <p>1 A. Uh-huh.</p> <p>2 MR. DUNN: Is that a yes?</p> <p>3 A. Yes, it is.</p> <p>4 Q. (BY MS. WESTFALL) Could you describe what</p> <p>5 Ms. Payne is indicating in her E-mail message?</p> <p>6 A. Again, I'm not real good at -- I don't do E-mails</p> <p>7 but it appears that after her name, she has put in, "Yes</p> <p>8 to voter ID. No to a school, university or college ID</p> <p>9 as proper identification to vote. Too many illegals</p> <p>10 have acquired these and it would defeat the purpose.</p> <p>11 Thank you."</p> <p>12 Q. Do you see that this communication was sent on</p> <p>13 Thursday, January 27th, 2011, at the top of the page?</p> <p>14 MR. SWEETEN: Objection. Form. Objection.</p> <p>15 Foundation.</p> <p>16 Go ahead. You can answer.</p> <p>17 A. It appears that it was sent on January 27th.</p> <p>18 Q. (BY MS. WESTFALL) You just described Ms. Payne's</p> <p>19 E-mail. Do you know whether others shared Ms. Payne's</p> <p>20 views that undocumented persons have college IDs?</p> <p>21 MR. SWEETEN: Objection to the question as</p> <p>22 vague. Objection to the question to the extent it asks</p> <p>23 you to reveal your thoughts, your mental impressions,</p> <p>24 your analysis of any given legislation. So, don't</p> <p>25 answer it if it would require you to do so.</p>	<p>88</p> <p>1 not targeted at someone -- to me, this says anyone that</p> <p>2 is not entitled to that identification and they get one,</p> <p>3 they illegally got that. So, I would say that</p> <p>4 discussion was one that I heard on the floor several</p> <p>5 times.</p> <p>6 Q. (BY MS. WESTFALL) Senator, had you ever heard</p> <p>7 concerns that undocumented people could have access to</p> <p>8 student IDs in particular, based on communications in</p> <p>9 the public record or constituent or advocacy group</p> <p>10 communications?</p> <p>11 A. It is a matter of public record of newspaper</p> <p>12 stories and/or magazine articles that discussed that or</p> <p>13 things that had been written prior to in other reports</p> <p>14 or studies. So, yes, I have read that.</p> <p>15 Q. So, before appearing for this deposition today,</p> <p>16 you had heard, either through news articles, public</p> <p>17 debate or constituent communications, that there was a</p> <p>18 concern about undocumented people having access to</p> <p>19 student IDs, is that your testimony?</p> <p>20 A. I'm testifying that in reading prior to this of</p> <p>21 accounts of things that were written, there had been</p> <p>22 people that had written of multiple concerns, of which</p> <p>23 this was one.</p> <p>24 Q. And "this," you mean student IDs in particular?</p> <p>25 A. I believe the discussion on student IDs probably</p>



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<p>1 was restricted to discussion on the floor of the Senate.</p> <p>2 Q. Did it relate to or concern people without</p> <p>3 documentation in this country obtaining student IDs?</p> <p>4 A. No.</p> <p>5 Q. Had you ever --</p> <p>6 A. I'm sorry, I need to clarify. To my knowledge, I</p> <p>7 do not remember a discussion of that type.</p> <p>8 Q. When did you first hear that there was a concern</p> <p>9 about undocumented people having student IDs?</p> <p>10 MR. SWEETEN: Objection to the extent it</p> <p>11 calls for privilege.</p> <p>12 A. To my knowledge, I don't remember that issue</p> <p>13 being brought up other than you showing me this, that</p> <p>14 someone, it appears, sent in.</p> <p>15 Q. (BY MS. WESTFALL) Had Ms. McCoy ever raised the</p> <p>16 issue of undocumented people having student IDs with</p> <p>17 you?</p> <p>18 MR. SWEETEN: Don't answer the question.</p> <p>19 A. Privilege.</p> <p>20 Q. (BY MS. WESTFALL) Are you following the advice</p> <p>21 of counsel?</p> <p>22 MR. SWEETEN: Objection. That calls for</p> <p>23 privilege.</p> <p>24 Don't answer the question is my instruction.</p> <p>25 A. Privilege.</p>	<p>89</p> <p>1 A. Yes.</p> <p>2 Q. (BY MS. WESTFALL) They are, they are sent to her</p> <p>3 for her response?</p> <p>4 A. I think my answer is I don't know. My assumption</p> <p>5 is that it is because there are no E-mails sent directly</p> <p>6 to me. There are things sent to my Senate office, which</p> <p>7 in the Senate office, she is the -- she runs the Senate</p> <p>8 office. So, it wasn't sent directly to me. I have -- I</p> <p>9 don't have things sent to me personally.</p> <p>10 Q. Is it your understanding that Ms. McCoy reviews</p> <p>11 all E-mails that gets sent to your E-mail address? Is</p> <p>12 that right?</p> <p>13 A. I didn't say that. I said I believe that they</p> <p>14 are routed to her, and my assumption is that she does</p> <p>15 review those.</p> <p>16 MS. WESTFALL: Could you mark this as 555.</p> <p>17 (Exhibit 555 marked.)</p> <p>18 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>19 marked as US 555. Have you seen this document before?</p> <p>20 A. Have I seen this? No.</p> <p>21 Q. Could you describe the E-mail message that is</p> <p>22 contained in US 555?</p> <p>23 A. It appears to come from someone outside of my</p> <p>24 district that -- I don't even know where Needville,</p> <p>25 Texas is, and I don't recognize the name of the person.</p>
<p>90</p> <p>1 Q. (BY MS. WESTFALL) Had Ms. McCoy ever told you</p> <p>2 about constituent communication or advocacy groups</p> <p>3 concerned that undocumented people had student IDs?</p> <p>4 MR. SWEETEN: Same objection.</p> <p>5 Don't answer the question. Privileged.</p> <p>6 A. Privilege.</p> <p>7 Q. (BY MS. WESTFALL) Do you know whether your</p> <p>8 office responded to this E-mail from Ms. Payne?</p> <p>9 MR. SWEETEN: You can answer.</p> <p>10 A. I do not know.</p> <p>11 Q. (BY MS. WESTFALL) If Ms. McCoy had received a</p> <p>12 lot of complaints and a lot of E-mails about the</p> <p>13 possibility of undocumented people getting student IDs,</p> <p>14 do you think she would have raised that with you?</p> <p>15 MR. SWEETEN: Don't answer the question.</p> <p>16 Legislative privilege.</p> <p>17 Q. (BY MS. WESTFALL) Can you answer that question?</p> <p>18 MR. SWEETEN: No. My instruction is do not</p> <p>19 answer the question.</p> <p>20 A. Privilege.</p> <p>21 Q. (BY MS. WESTFALL) Do you know whether E-mails</p> <p>22 sent from constituents to you are automatically routed</p> <p>23 to Ms. McCoy's E-mail?</p> <p>24 MR. SWEETEN: You can answer as a general</p> <p>25 matter.</p>	<p>92</p> <p>1 And he appears to have sent a message to my office.</p> <p>2 Q. Could you describe the message?</p> <p>3 A. He says -- he's congratulating me on a wonderful</p> <p>4 voter ID bill for all legal citizens of Texas.</p> <p>5 Q. Do you know whether you responded to this E-mail?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you know why this constituent was saying it</p> <p>8 was helpful for legal citizens of Texas?</p> <p>9 MR. SWEETEN: Objection. Calls for</p> <p>10 speculation. Objection. Privileged.</p> <p>11 Don't reveal your thoughts, mental</p> <p>12 impressions about why someone would have done something</p> <p>13 to the extent it would relate to any motivation about --</p> <p>14 MS. WESTFALL: Mr. Sweeten, I'm asking him</p> <p>15 about his understanding of why this constituent was</p> <p>16 writing this E-mail. It's not about anything that's in</p> <p>17 the Senator's head.</p> <p>18 MR. SWEETEN: Well, he said he's never seen</p> <p>19 this before in his life, he doesn't know this guy,</p> <p>20 doesn't know where he's from, and now you're asking him</p> <p>21 to interpret why he said something. So, that's first is</p> <p>22 it's an inappropriate question, but secondly --</p> <p>23 MS. WESTFALL: But that's not a basis for</p> <p>24 instructing the witness not to answer.</p> <p>25 MR. SWEETEN: Well, let's get to that. The</p>



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<p>93</p> <p>1 basis for instructing him not to answer is legislative 2 privilege to the extent that it would require him to 3 reveal any mental thoughts, impressions about why 4 someone would do that. 5 If in answering the question, it would 6 require him to reveal his impressions or thoughts or 7 motivations about the bill, then he can't answer the 8 question as phrased. 9 Q. (BY MS. WESTFALL) Do you have any understanding 10 about why this constituent would link voter ID and other 11 immigration bills in his E-mail? 12 MR. SWEETEN: Same objection. Same 13 instruction. 14 A. Privilege. 15 Q. (BY MS. WESTFALL) Can you answer it outside of 16 any privileged information or testimony that you might 17 have? 18 A. I don't know this person. 19 Q. So, is your answer you don't know why he linked 20 voter ID with illegal immigration? 21 MR. SWEETEN: Same objection. Same 22 instruction. 23 Q. (BY MS. WESTFALL) Do you not know? 24 A. Privilege. 25 Q. Do you know whether other constituents, advocacy</p>	<p>95</p> <p>1 you're asking the Senator. 2 MS. WESTFALL: I am not asking him to reveal 3 any of his subjective motivations in his advancement of 4 Senate Bill 14. 5 I'm asking about his opinion of why a 6 constituent would put something in an E-mail. 7 Mr. Sweeten, would you reconsider your 8 objection? 9 MR. SWEETEN: It's the same objection. 10 First, we can go back over the reason that -- you're 11 asking for speculation. You're also asking for him to 12 reveal his thoughts, mental impressions about why 13 someone would vote for a specific piece of legislation, 14 which implicates the legislative privilege. 15 I will not reconsider it -- I mean, I have 16 considered it again but my objection is appropriate and 17 I'm going to maintain the same objection and 18 instructions. 19 Q. (BY MS. WESTFALL) Without -- Senator, without 20 talking about your own motivations in advancing Senate 21 Bill 14, why do you think a constituent would praise 22 your work on voter ID based on behalf of legal citizens 23 of Texas, as opposed to illegal citizens of Texas? Do 24 you know why he would do that? 25 MR. SWEETEN: Same objection. Same</p>
<p>94</p> <p>1 groups or interest groups also saw that there was a 2 connection between the voter ID bill and immigration 3 bills? 4 MR. SWEETEN: Same objection. Instruct you 5 not to answer the question on the basis of legislative 6 privilege. 7 A. Privilege. 8 Q. (BY MS. WESTFALL) Do you have any idea why a 9 constituent like Mr. Kucera would have connected the two 10 issues? 11 MR. SWEETEN: Same instruction. Don't 12 answer on the basis of privilege. Same objection. 13 MS. WESTFALL: Based on their motivations 14 and intents, not based on the Senator's, Mr. Sweeten. 15 MR. SWEETEN: Same -- you're asking his 16 opinion as to why someone would do something, which 17 could invade his -- his thoughts and mental impressions 18 about a bill. It is subject to privilege. Same 19 instruction. Same objection. 20 MS. WESTFALL: Mr. Sweeten, the question is 21 about the motivation of the constituent writing the 22 letter. It's not about the motivation of the Senator. 23 Will you withdraw your objection? 24 MR. SWEETEN: No, absolutely not. I'm -- my 25 objection is appropriate based upon the questions that</p>	<p>96</p> <p>1 instruction. Legislative privilege and vague. Calls 2 for speculation. 3 A. Privilege. 4 Q. (BY MS. WESTFALL) Can you answer that question 5 about why the constituent would write that? 6 A. Privilege. 7 Q. Is your answer you don't know why the constituent 8 would link those two issues? 9 MR. SWEETEN: Objection. Asked and 10 answered. Objection to the question as vague and calls 11 for speculation. Objection based on the legislative 12 privilege. Instruct not to answer the question. 13 A. Privilege. 14 Q. (BY MS. WESTFALL) Are you following his counsel? 15 A. Yes, I am. 16 Q. Did you receive any other constituent 17 communications that similarly praised you for your work 18 on Senate Bill 14 on behalf of legal citizens of Texas? 19 A. I don't see communications coming in. 20 Q. I'm not asking about -- I guess I don't 21 understand your answer. 22 Are you aware of any other constituents who were 23 supportive of your work on voter ID because it was 24 helpful to legal citizens of Texas? 25 A. Are you asking if people communicated to me?</p>



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<p>97</p> <p>1 Q. Yes.</p> <p>2 A. By print?</p> <p>3 Q. Are you aware of any communications at all coming</p> <p>4 into your office -- and I'm sure your counsel will</p> <p>5 advise you that those are not privileged -- that were</p> <p>6 supportive of your work on voter ID because it helped</p> <p>7 legal citizens of Texas?</p> <p>8 A. Every time I go to the grocery store, someone</p> <p>9 still will say something, say, "Good job on Senate Bill</p> <p>10 14 or the photo ID bill."</p> <p>11 Q. Are you aware of many constituents who say this</p> <p>12 is helpful on the issue of illegal immigration that you</p> <p>13 passed and worked very hard on Senate Bill 14?</p> <p>14 A. People say, you know, it's a good piece of</p> <p>15 legislation. They don't go into specifics.</p> <p>16 Q. Are you aware of ever having heard any</p> <p>17 constituent say to you, "Thanks for your work on voter</p> <p>18 ID. It helped. It helps on illegal immigration"?</p> <p>19 A. I cannot give you a specific example of where</p> <p>20 someone said that.</p> <p>21 Q. And looking at US 555, is this the first time</p> <p>22 today sitting here in this deposition that you have</p> <p>23 received a communication from a constituent -- or, I</p> <p>24 guess, a resident of Texas, not a constituent, thanking</p> <p>25 you for your work on voter ID because it helped on</p>	<p>99</p> <p>1 office responded to Mr. Kucera's E-mail?</p> <p>2 A. I do not know but suspect we did not.</p> <p>3 Q. Do you know whether Ms. McCoy searched for</p> <p>4 responses to constituent E-mail on voter ID and produced</p> <p>5 them to your attorneys in this action?</p> <p>6 A. Yes.</p> <p>7 Q. Did she produce any such responses, to your</p> <p>8 knowledge?</p> <p>9 A. I don't know. I know that she was attempting --</p> <p>10 she checked our office. She told me she was going</p> <p>11 through it and was going to return everything we had,</p> <p>12 per the instructions of the Attorney General.</p> <p>13 Q. I'm sorry, also the Lieutenant Governor?</p> <p>14 A. No. Attorney General and, I guess, the Justice</p> <p>15 Department. The request from the Court had a request,</p> <p>16 and we complied with the request.</p> <p>17 Q. Thank you.</p> <p>18 MS. WESTFALL: Would you mark this US 556.</p> <p>19 (Exhibit 556 marked.)</p> <p>20 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>21 marked as US 556. Do you recognize this document?</p> <p>22 A. No.</p> <p>23 Q. Do you know a Mickey Mathis?</p> <p>24 A. No.</p> <p>25 Q. Does this appear to be an E-mail message from</p>
<p>98</p> <p>1 immigration issues?</p> <p>2 A. What is US 55?</p> <p>3 Q. This exhibit that you're looking at now.</p> <p>4 MR. SWEETEN: 555.</p> <p>5 A. Okay. What was your question?</p> <p>6 Q. (BY MS. WESTFALL) Is this the first time that</p> <p>7 you're hearing support for your work on voter ID because</p> <p>8 it helps on immigration issues, sitting here today?</p> <p>9 MR. SWEETEN: From constituents.</p> <p>10 Q. (BY MS. WESTFALL) From constituents.</p> <p>11 A. Yes.</p> <p>12 Q. You never heard any constituents say this is</p> <p>13 good, from the standpoint of immigration, until you saw</p> <p>14 this letter here?</p> <p>15 A. My testimony is that I do not recall anyone</p> <p>16 specifically saying that this was good for immigration</p> <p>17 issues.</p> <p>18 Q. Do you recall whether Mr. Wallace saw there being</p> <p>19 a connection between Senate Bill 14 and voter ID and</p> <p>20 fighting illegal immigration?</p> <p>21 MR. SWEETEN: Objection. Calls for</p> <p>22 speculation but you can testify as to what Mr. Wallace</p> <p>23 told you.</p> <p>24 A. No. No communication.</p> <p>25 Q. (BY MS. WESTFALL) Do you know whether your</p>	<p>100</p> <p>1 Mickey Mathis to your office on January 21st, 2011?</p> <p>2 A. It appears that is. I believe that's what it</p> <p>3 says.</p> <p>4 Q. Is Brownwood, Texas in your district?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Could you describe the message that Mr. Mathis</p> <p>7 conveyed -- pardon me -- Ms. Mathis conveyed?</p> <p>8 MR. SWEETEN: You can testify based on the</p> <p>9 text of the E-mail.</p> <p>10 A. "Voter ID, E verify and other anti illegal</p> <p>11 immigration bills are crucial to this State. 24 percent</p> <p>12 of the population is on some kind of social program.</p> <p>13 Schools, communities and our state government are all</p> <p>14 overdrawn at the bank. Stop the invasion. Clean out</p> <p>15 the welfare rolls. Verify who is in this state.</p> <p>16 Washington has stopped deporting. Texas has to tighten</p> <p>17 up and toughen up now."</p> <p>18 Q. Do you recall whether Ms. McCoy ever showed this</p> <p>19 E-mail to you?</p> <p>20 A. I've never seen this E-mail.</p> <p>21 Q. Do you recall whether Ms. McCoy ever described</p> <p>22 the sentiments expressed in this E-mail to you?</p> <p>23 MR. SWEETEN: Objection. Privilege.</p> <p>24 Don't answer. Instruct you not to answer.</p> <p>25 Q. (BY MS. WESTFALL) Are you following the advice</p>



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<p>1 of counsel?</p> <p>2 A. Privilege. Privilege.</p> <p>3 Q. Do you know whether you responded to this E-mail?</p> <p>4 A. I do not know.</p> <p>5 Q. Do you know why Ms. Mathis saw that voter ID, E</p> <p>6 verify and other illegal immigration bills, as she puts</p> <p>7 it, were all connected topically?</p> <p>8 MR. SWEETEN: Objection. Calls for</p> <p>9 speculation. Objection. Vague. Objection. Calls for</p> <p>10 matters of legislative privilege. Instruct not to</p> <p>11 answer on that basis.</p> <p>12 Q. (BY MS. WESTFALL) To the extent that you can</p> <p>13 answer without revealing your mental impressions, could</p> <p>14 you answer the question?</p> <p>15 MR. SWEETEN: Same obstruction.</p> <p>16 A. If you will reword the question, and it's not</p> <p>17 privileged, I'll be glad to.</p> <p>18 Q. (BY MS. WESTFALL) Senator, without testifying as</p> <p>19 to your mental impressions of this E-mail, could you</p> <p>20 explain why Ms. Mathis is connecting voter ID, E verify</p> <p>21 and illegal immigration bills topically in her E-mail?</p> <p>22 MR. SWEETEN: Objection. Vague. Objection.</p> <p>23 Calls for speculation. Objection. Subject to the</p> <p>24 legislative privilege.</p> <p>25 Don't reveal your thoughts, mental</p>	<p>101</p> <p>1 A. No.</p> <p>2 Q. Never heard of it?</p> <p>3 A. No.</p> <p>4 Q. Did Ms. McCoy tell you anything about the</p> <p>5 existence of this communication, without revealing any</p> <p>6 private conversations you've had with Ms. McCoy?</p> <p>7 A. No communications with Ms. McCoy on this.</p> <p>8 Q. Do you see that it indicates in the second</p> <p>9 paragraph if you ever have any need of incident reports,</p> <p>10 Catherine Engelbrecht of King Street Patriots would be</p> <p>11 willing to provide you with empirical evidence? Do you</p> <p>12 see in that E-mail it does, sir?</p> <p>13 A. I read that she said that, yes.</p> <p>14 Q. Pardon?</p> <p>15 A. I read that she said that, yes.</p> <p>16 Q. Could you describe the E-mail that she sent to</p> <p>17 you?</p> <p>18 A. I can read you what it says. "If you ever have</p> <p>19 need of any of our incident reports to provide the</p> <p>20 empirical evidence I heard requested so often today,</p> <p>21 please let me know. We would be happy to provide you</p> <p>22 with any of our documentation."</p> <p>23 Q. And could you tell me what date on which this</p> <p>24 E-mail appears to have been sent?</p> <p>25 A. Looks like January the 25th.</p> <p>103</p>
<p>102</p> <p>1 impressions, motivations, analysis recording any sort of</p> <p>2 legislation, including Senate Bill 14.</p> <p>3 MS. WESTFALL: Mr. Sweeten, the question</p> <p>4 itself excludes any mental impressions that the Senator</p> <p>5 may have in the response.</p> <p>6 MR. SWEETEN: To the extent that you would</p> <p>7 not reveal privilege --</p> <p>8 A. I can't answer the question without a -- giving a</p> <p>9 privilege. I'm sorry, I cannot answer that question.</p> <p>10 MS. WESTFALL: Would you mark this as 557.</p> <p>11 (Exhibit 557 marked.)</p> <p>12 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>13 marked US 557. Do you recognize this document?</p> <p>14 A. I'm sorry?</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. I've never seen it.</p> <p>17 Q. Do you know Catherine Engelbrecht?</p> <p>18 A. I do not.</p> <p>19 Q. You've never heard of her?</p> <p>20 A. No.</p> <p>21 Q. Do you know who the King Street Patriots are?</p> <p>22 A. No.</p> <p>23 Q. Do you know who True the Vote is?</p> <p>24 A. What?</p> <p>25 Q. True the Vote, the organization.</p>	<p>104</p> <p>1 Q. Do you know whether there was any response from</p> <p>2 your office to this E-mail?</p> <p>3 A. I do not know.</p> <p>4 Q. Do you know whether Ms. Engelbrecht ever sent to</p> <p>5 you any incident reports she had related to Senate Bill</p> <p>6 14?</p> <p>7 A. I do not. No, I do not know, and I have no</p> <p>8 indication that she sent anything.</p> <p>9 Q. Are you familiar with an organization called</p> <p>10 Empower Texans?</p> <p>11 A. I have heard of Empower Texans but I'm not</p> <p>12 familiar with them.</p> <p>13 Q. Have you ever had any communications with anyone</p> <p>14 at Empower Texans?</p> <p>15 A. Since I don't know who the group is, I don't know</p> <p>16 the individuals involved, so, my answer would have to be</p> <p>17 no.</p> <p>18 Q. To the extent you know, do you know what Empower</p> <p>19 Texans is?</p> <p>20 A. No.</p> <p>21 Q. Do you know Michael Quinn Sullivan?</p> <p>22 A. I know the name.</p> <p>23 Q. Who is he?</p> <p>24 A. He is a person named Michael Quinn Sullivan.</p> <p>25 Q. Do you know whether he represents a group or</p>



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Troy Fraser

June 13, 2012

<p>105</p> <p>1 represents a particular --</p> <p>2 A. He is a political activist.</p> <p>3 Q. Where is he based?</p> <p>4 A. I don't know.</p> <p>5 Q. What are his issues on which he advocates?</p> <p>6 A. I don't know.</p> <p>7 Q. Have you ever spoken to Mr. Sullivan?</p> <p>8 A. I believe that I have met him, but a conversation</p> <p>9 other than hello is probably the extent. I don't know</p> <p>10 Michael Quinn Sullivan.</p> <p>11 Q. Is it your testimony you've never discussed voter</p> <p>12 ID with Mr. Sullivan?</p> <p>13 A. No. No.</p> <p>14 Q. What is the Immigration Reform Coalition of</p> <p>15 Texas?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know Rebecca Forrest?</p> <p>18 A. Forrest?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. What is the San Antonio Tea Party?</p> <p>22 A. I would suspect it is the San Antonio Tea Party.</p> <p>23 Q. And do you know what their central areas of</p> <p>24 advocacy are?</p> <p>25 A. The geographic area or issues?</p>	<p>107</p> <p>1 MR. SWEETEN: Asked and answered.</p> <p>2 Q. (BY MS. WESTFALL) Do you know Paul Bettencourt?</p> <p>3 MR. SWEETEN: Asked and answered.</p> <p>4 Objection.</p> <p>5 A. I don't know Paul Bettencourt but he testified in</p> <p>6 2009. When we were hearing the bill, he signed up as</p> <p>7 someone to testify, and I listened to his testimony</p> <p>8 then.</p> <p>9 Q. (BY MS. WESTFALL) Is that the only interaction</p> <p>10 or communication you have had with Mr. Bettencourt?</p> <p>11 A. Only communication.</p> <p>12 Q. Have you had any communications with MALDEF,</p> <p>13 Mexican-American Legal Defense and Education Fund?</p> <p>14 A. That's a very broad question.</p> <p>15 Q. About voter ID.</p> <p>16 A. Not to my knowledge that I've ever talked to</p> <p>17 MALDEF about voter ID.</p> <p>18 Q. Have you ever talked to Luis Figueroa?</p> <p>19 A. No.</p> <p>20 Q. Have you ever spoken to LULAC about voter ID?</p> <p>21 A. No.</p> <p>22 MS. WESTFALL: Would you mark this as 558?</p> <p>23 (Exhibit 558 marked.)</p> <p>24 Q. (BY MS. WESTFALL) You've been handed what's been</p> <p>25 marked US 558. Do you recognize this?</p>
<p>106</p> <p>1 Q. No. Advocacy. What are their issues?</p> <p>2 A. I have no idea.</p> <p>3 Q. Is San Antonio in your district?</p> <p>4 A. No.</p> <p>5 Q. Do you know who George Rodriguez is?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether George Rodriguez is the</p> <p>8 president of the San Antonio Tea Party?</p> <p>9 A. I have no idea.</p> <p>10 Q. Do you know a Raymond Wilkinson?</p> <p>11 A. No.</p> <p>12 Q. Are you familiar with a Tenth Amendment Center?</p> <p>13 A. No.</p> <p>14 Q. Do you know Steve Basinger?</p> <p>15 A. Basinger?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. I believe you testified you're not familiar with</p> <p>19 the King Street Patriots?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with True the Vote?</p> <p>22 A. No.</p> <p>23 Q. And you've never had any contact with</p> <p>24 Ms. Catherine Engelbrecht?</p> <p>25 A. No.</p>	<p>108</p> <p>1 A. No.</p> <p>2 Q. You've never seen this article before?</p> <p>3 A. Not to my recollection because I don't know what</p> <p>4 it is.</p> <p>5 Q. Does it appear to be an article from the</p> <p>6 STATESMAN dated January 26, 2011, called Texas Senators</p> <p>7 split on whether voter ID bill is constitutional?</p> <p>8 A. It appears to be connected with the STATESMAN. I</p> <p>9 don't know that it was an article.</p> <p>10 Q. Do you see about two-thirds of the way down the</p> <p>11 page --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- it references you by name? Do you see that</p> <p>14 paragraph?</p> <p>15 A. "After the vote, the bill's author?"</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Could you just read that paragraph and let me</p> <p>21 know when you've had a chance to review it?</p> <p>22 A. "After" --</p> <p>23 Q. Oh, you can --</p> <p>24 A. "After the vote, the bill's author, State Senator</p> <p>25 Troy Fraser, Republican Horseshoe Bay, said he expects</p>



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<p style="text-align: right;">109</p> <p>1 some of the amendments will be added to the bill to</p> <p>2 address issues that critics said would unfairly affect</p> <p>3 minorities, people with disabilities and the elderly.</p> <p>4 Those changes, Fraser said, will ensure it passes muster</p> <p>5 with the Justice Department, although both he and</p> <p>6 Dewhurst said they believe the bill as passed Tuesday</p> <p>7 would be approved under the Voting Rights Act."</p> <p>8 Q. Thank you.</p> <p>9 Did you say something to that effect, do you</p> <p>10 recall?</p> <p>11 A. No. I don't -- there -- I do not remember making</p> <p>12 this quote to the AUSTIN AMERICAN STATESMAN.</p> <p>13 Q. Do you remember saying anything to that effect?</p> <p>14 A. I do remember that we were looking at issues,</p> <p>15 making sure that we had looked at these issues.</p> <p>16 Q. Were any amendments passed that would help</p> <p>17 address what critics said would unfairly affect</p> <p>18 minorities?</p> <p>19 MR. SWEETEN: Objection. Don't answer on</p> <p>20 the basis of legislative privilege.</p> <p>21 Q. (BY MS. WESTFALL) Can you answer without --</p> <p>22 A. Privilege. If you want to restate the</p> <p>23 question --</p> <p>24 Q. Without revealing any mental impressions,</p> <p>25 conversations with other Legislators and based on the</p>	<p style="text-align: right;">111</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Correction Page Line</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">110</p> <p>1 public record, are there any amendments that were</p> <p>2 incorporated into Senate Bill 14 that addressed critics</p> <p>3 that the bill would hurt minorities voters?</p> <p>4 MR. SWEETEN: Objection. Calls for matters</p> <p>5 of privilege. You're still asking for his mental</p> <p>6 impressions and his assessment. Even though I realize</p> <p>7 the preface of the question intends not to do so, it</p> <p>8 still does so. Therefore, objection. Privilege.</p> <p>9 Instruct not to the answer.</p> <p>10 A. Privilege.</p> <p>11 MS. WESTFALL: Okay. No further questions</p> <p>12 at this time.</p> <p>13 I'm going to turn it over to Mr. Dunn.</p> <p>14 Mr. Dunn, would you like to sit here?</p> <p>15 MR. DUNN: I'm not going to ask any</p> <p>16 questions.</p> <p>17 MR. SWEETEN: We will reserve questions</p> <p>18 until the time of trial.</p> <p>19 (Whereupon at 3:49 p.m. the</p> <p>20 deposition was concluded.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">112</p> <p>1 I, SENATOR TROY FRASER, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 SENATOR TROY FRASER</p> <p>6</p> <p>7 THE STATE OF _____</p> <p>8 COUNTY OF _____</p> <p>9 Before me, _____, on this day personally</p> <p>10 appeared SENATOR TROY FRASER, known to me (or proved to</p> <p>11 me under oath or through _____) (description of</p> <p>12 identity card or other document) to be the person whose</p> <p>13 name is subscribed to the foregoing instrument and</p> <p>14 acknowledged to me that they executed the same for the</p> <p>15 purposes and consideration therein expressed.</p> <p>16 Given under my hand and seal of office this _____ day</p> <p>17 of _____.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> 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June 13, 2012

<p>1 STATE OF TEXAS 2 COUNTY OF HARRIS</p> <p>3 I, the undersigned certified shorthand reporter 4 and notary public in and for the State of Texas, certify 5 that the facts stated in the foregoing pages are true 6 and correct.</p> <p>7 I further certify that I am neither attorney or 8 counsel for, nor related to or employed by, any of the 9 parties to the action in which this deposition is taken 10 and, further, that I am not a relative or employee of 11 any counsel employed by the parties hereto, or 12 financially interested in the action.</p> <p>13 SUBSCRIBED AND SWORN TO under my hand and seal of 14 office on this the 13th day of June, 2012.</p> <p>15 EDITH A. BOGGS, CSR 16 Certified Shorthand Reporter and 17 Notary Public in and for 18 the State of Texas 19 Notary Expires: 5-10-2016 20 Certificate No. 3022 21 Expiration date: 12-31-2013 22 Esquire Deposition Solutions, LLC 23 Registration No. 3 24 25</p>	<p>113</p>



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